86-686

No. _____

Supreme Court, U.S.
FILED
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1986

HYDROPOOL and COGENERATION SERVICES, INC., Appellants,

vs.

CALIFORNIA PUBLIC UTILITIES COMMISSION and PACIFIC GAS & ELECTRIC COMPANY, Appellees.

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

APPENDICES TO JURISDICTIONAL STATEMENT

VOLUME III (of 3 Volumes)
Appendix L through Y

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Decision 86-02-033

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the transmission system operations of certain California electric corporations regarding transmission constraints on cogeneration and small power production development.	)	I.84-04-077 (Filed April 18, 1984)

ORDER MODIFYING DECISION 85-09-058

AND DENYING REHEARING

An application for rehearing of Decision (D.) 85-09-058 has been filed by Cogeneration Services, Inc. and Hydropool (Hydropool). Pacific Gas & Electric Company (PG&E), San Diego Gas & Electric Company, and Southern California Edison Company have filed oppositions to the application. We have considered all of the allegations of error raised in this application and the responses in opposition thereto, and are of the opinion that sufficient grounds for granting rehearing

have not been shown. However, we will modify and clarify the decision as indicated below. Therefore,

IT IS ORDERED that D.85-09-058 is modified as follows:

1. The first two paragraphs under Section D on page 16 are deleted and the following language substituted:

> "The ALJ issued a ruling in which he concluded that no further hearings were necessary on QF interconnection to the Intertie under the terms of the interim solution (see Appendix A). We hereby affirm the ALJ's ruling, incorporate it by reference herein, and grant PG&E's Petition to Modify D.85-08-37. We find after reviewing the [2] evidence that there is an adequate basis for excluding the Intertie from the terms of the interim solution.
>
> "We stated in D.85-06-163, the Orphan Contracts decision, that resolution of PG&E's Petition to Modify would determine that ability of Hydropool to enter Standard Offer 4 agreements with PG&E. Our decision to grant PG&E's Petition means, of course, that Hydropool does not have the ability to enter Standard Offer 4 agreements under the terms of the interim solution,

as long as its interconnection is through the Intertie. We note that we need not reach the issue of whether Hydropool's Standard Offer 4 tenders complied with all requirements prior to our having prospectively suspended Standard Offer 4.

"We stress that this decision does not determine access to the Intertie. No one has declared that Hydropool cannot use the Interie to deliver power to PG&E. The dispute is one over the price which must be paid for that power. The evidence in this case supports our decision, made in response to a documented, critical but temporary situation of transmission of system constraints, not to make Standard Offer 4 prices available to any QF interconnecting with the Intertie. The record nowhere indicates and, in fact, contradicts any notion that either the Commission, the Commission staff, the respondent utilities, or any QF ever contemplated that our Standard Offers applied to such interconnection, particularly in such circumstances. We do not know whether the institutionalized avoided cost of Standard Offer 4 is appropriate for a situation where, because of the Intertie interconnection, a QF's power of necessity will always displace economy power from the Northwest whenever such power is available to fill PG&E's capacity entitlement. We do not believe PURPA requires such a result, without convincing

evidence that PG&E's avoided cost in such a situation is indeed equivalent to [3] the Standard Offer 4 price.

"Finally, we do not reach the larger question of whether, and if so, under what conditions, QFs ever should have access to the Intertie under the Standard Offer type of option. Instead, we find that a separate proceeding should be established to consider the broader issues of out-of-service area and out-of-state QF power in the context of how to utilize our scarce interstate transmission resources for the maximum benefit of the ratepayers. Issues to be addressed in that proceeding will include, but will not be limited to:"

2. New Finding 8a is added to read:

"D.85-06-163 stated that resolution of PG&E's Petition to Modify the interim solution by excluding the Intertie would determine the ability of Hydropool to enter Standard Offer 4 agreements with PG&E."

3. New Conclusion 3a is added to read:

"PG&E's Petition to Modify D.84-08-037 to exclude the Intertie from the terms of the interim solution should be granted."

4. New Conclusion 3b is added to read:

"Granting PG&E's Petition to Modify will have the effect of determining that Hydropool does not have the

> ability to tender Standard Offer 4 contracts to PG&E under the terms of the interim solution, but will not have the effect of excluding Hydropool from the Intertie under some other pricing arrangement."

[4] IT IS FURTHER ORDERED that rehearing of D.85-09-058, as modified above, is hereby denied.

This order is effective today. Dated February 5, 1986, at San Francisco, California

DONALD VIAL
President

VISTOR CALVO
FREDERICK R. DUDA
Commissioners

Commissioner Priscilla C. Grow, being necessarily absent, did not participate.

I dissent.

WILLIAM T. BAGLEY, Commissioner

ALJ/SM/TCG

OPINION ON PETITION FOR MODIFICATION BY RENEWABLE ENERGY VENTURES, INC.

On August 2, 1985, Renewable Energy Ventures, Inc. (REV) filed a petition for modification of Decision (D.) 85-06-163.

* * *

[2] As explained in D.85-06-163, for a QF to have secured a valid contract based on interim Standard Offer 4 prior to its suspension, the QF must have completed and signed such an agreement with delivery to the utility before April 17, 1985. Compliance with the Qualifying Facility Milestone Procedure (QFMP) within 60 days of the effective date of D.85-06-163 (June 21, 1985) was also required.

By its petition, REV seeks the modification of D.85-06-163 to permit Southern California Edison Company (Edison) to execute power purchase agreements based on interim Standard Offer 4 for REV's three planned wind

parks. Edison has not responded to REV's petition.

* * *

[3] According to REV, in D.85-06-163 the Commission found Energy Distribution to be a "special case" and entitled to a purchase power agreement with Edison based on interim Standard Offer 4 even though the criteria specified in that [4] order for securing such agreements had not been fully met by Energy Distribution.

Specifically, REV notes the Commission's conclusion that Energy Distribution's failure to comply with the QFMP was an insufficient reason for Edison to refuse to execute a Standard Offer 4 agreement once Energy Distribution had indicated its acceptance of the standard offer. REV asserts that the Commission's findings with respect to Energy Distribution were made "irrespective of

whether actual agreements existed or were signed by Energy Distribution".

REV acknowledges that it had not literally executed an interim Standard Offer 4 agreement and tendered it to Edison before April 17, 1984. REV states, however, that the course of action which it did take in good faith was certainly one which should have lead to the same result--an executed purchase power agreement based on interim Standard Offer 4.

* * *

[7] The facts cited by REV in its petition suggest that it is in fact similarly situated to Energy Distribution. We note that Edison has chosen not to respond to REV's petition. Edison has therefore not contested REV's assertion that REV had indicated to Edison its desire to execute an interim Standard Offer 4 purchase power agreement for its three projects and provided all information necessary to that end prior to April 17,

1985. Further, it appears that REV, unlike Energy Distribution, had in fact complied with the QFMP project definition and site control requirements before that date.

We therefore conclude that Edison should be directed to execute purchase power agreements based on interim Standard Offer 4 for the three wind projects identified in REV's petition. This conclusion, however, does not require any modification of D.85-06-163. The principles announced in that decision remain unchanged. Instead, our conclusion, as discussed above, is based upon the finding that REV is similarly situated to Energy Distribution whose factual circumstances entitled Energy Distribution to the same treatment as other qualifying facilities submitting signed interim Standard Offer 4 agreements to the utility prior to April 17, 1985.

* * *

[9] ORDER

IT IS ORDERED THAT:

1. Southern California Edison Company (Edison) shall execute purchase power agreements based on interim Standard Offer 4 for the three wind projects identified in the petition of Renewable Energy Ventures Inc. (REV) for modification of D.85-06-163. These wind projects are the Buck Wind Park "Addition D", the Cahuilla Wind Park, and the Oasis Wind Park. REV shall be required to meet all criteria [10] established in D.85-06-163 for execution of the purchase power agreements based on interim Standard Offer 4.

* * *

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE

STATE OF CALIFORNIA

Investigation on the Commission's own motion into the transmission system operations of certain California electric corporations regarding transmission constraints on cogeneration and small power production development.	)	OII 84-04-077

PETITION FOR MODIFICATION OF DECISION

NO. 84-04-037

[AS AMENDED]

Pursuant to Rule 43 of the Commission's Rules of Practice and Procedure Pacific Gas and Electric Company ("PGandE" or "Company"), and the Independent Energy Producers ("IEP") hereby submit this Petition for modification of Decision No. 84-08-037.

On August 1, 1984, the California Public Utilities Commission ("CPUC" or "commission") issued Decision No. 84-08-037, approving with only slight modifications the Stipulation and Order agreed to by Pacific Gas and Electric

Company, the Commission Staff, and Independent Energy [2] Producers. Most of the modifications were minor and uncontested. However, the Commission did make one modification, which if unclarified, could have serious and unintended consequences. This modification was to open the interim solution to Qualifying Facilities ("QFs") outside of the PGandE service territory without specifically stating that those QFs not be permitted to deliver power to PGandE into the 500 kV system north of Round Mountain Substation. PGandE and IEP seek modification of the Order to clarify that connection of out of area QFs must be to an area line.

On April 18, 1984 the CPUC issued OII 84-04-077, investigating transmission constraints and the ability of electric utilities to accept QF power. After a prehearing conference on June 22, PGandE, the Commission Staff, and IEP prepared a stipulation to permit QF development to continue. On July 5, 1984, the proposed

interim solution was mailed to parties on the service list of this proceeding and two OIR 2 proceedings; recipients were given until July 13 to file comments and those comments were discussed at a prehearing conference held in San Francisco on July 17, 1984. Two parties submitting comments, Cogeneration Services and California Energy Company, urged that the interim solution be available to QFs outside the PGandE service territory. The signatories to the stipulation unanimously opposed this change. To the limited extent that this issue could be [3] explored in a prehearing conference, PGandE and Staff pointed out that including those QFs would change the possible costs associated with the interim solution.

The Commission recognized the economic consequences of QFs out of the service territory displacing economy energy under the interim solution, and it proposed to limit those consequences by restricting to 990 the number of MW that could be connected under the interim solution. We believe the commission

never intended to permit QF use of the Intertie under the interim solution, but the Order is not clear on this point.

Moreover, the parties who negotiated the interim solution never intended it to apply to interconnection with the Pacific Northwest-Pacific Southwest 500kV intertie. In discussion during the publicly held workshops, the participants recognized that such an interconnection could result in displacement of low cost economy energy from the Pacific Northwest on a one-to-one basis. QF access to the Intertie was felt to be a policy question with broad implications which requires careful study and is inappropriate for inclusion in an interim order.

Furthermore, the interim solution commits PGandE to upgrading bulk and area transmission lines in order to accommodate additional QF power, thus ensuring that the upgrades proceed as expeditiously as possible. This commitment to build guarantees that any diseconomies in [4] operations in order to take additional QF

power would be purely interim, with an expected duration of no more than 5-8 years.

The situation on the Intertie is entirely different. Nothing in the interim solution addresses upgrades on the Intertie north of Round Mountain. Therefore, the economic consequences of permitting QFs on the Intertie under the interim solution would occur for the entire length of the QFs' contract. In sum, allowing QFs on the Intertie pursuant to the interim solution is totally contrary to the spirit of the document; it leaves that aspect unbalanced and without a solution. Clearly this result was unintended by the parties, and in all likelihood, by the Commission. While QFs are not precluded from access to the Intertie, such access is subject to negotiation and is not appropriate to the interim solution.

Finally, the stipulation as drafted did not limit the total number of MW that could be accommodated under the interim solution. If the Commission wants to specify such a limit,

the total number should be 1150 MW (rather than 990) to reflect the capacity added by the bulk upgrades. The total MW for each area line should remain as in Ordering Paragraph 10 (as corrected by Decision No. 84-08-037), but changing the total to 1150 will permit additional QF development on lines which are affected primarily by bulk constraints.

[5] CONCLUSION

Consistent with the analysis presented at pages 8-9 of Decision No. 84-08-037, that decision should be modified to add the following finding of fact and ordering paragraph:

FINDING OF FACT:

10. Because of its broad policy implications, a decision setting forth conditions for interconnection of QF's with the Pacific Northwest-Pacific Southwest 500kV intertie is inappropriate for inclusion in the interim solution.

ORDERING PARAGRAPH:

1.b The interim solution will not apply to QFs located outside of PGandE's service territory whose output would flow on the Pacific Northwest-Pacific Southwest 500 kV Intertie north of Round Mountain Substation.

In addition, the decision should be modified to reflect the fact that while the total area capacity under the interim solution should remain at 990, the total MW of QF development that may be interconnected is 1150. In Finding of Fact 9 and Ordering Paragraph 1.b, the number 990 should be changed to 1150.

[6]

Respectfully submitted,

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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into transmission system operations of certain California electric corporations regarding transmission constraints on cogeneration and small power production development.	)	I.84-04-077 (Filed April 18, 1984)

ADMINISTRATIVE LAW JUDGE'S RULING

Introduction

On April 12, 1985, counsel for Pacific Gas and Electric Company (PG&E) moved to dismiss the proceeding insofar as it involved the right of Hydropool - Cogeneration Services, Inc. (Hydropool) to interconnect to the pacific Northwest - Pacific Southwest 500 Kv Intertie (Intertie). San Diego Gas and Electric Company (SDG&E) and the Commission's Public Staff Division (staff) moved to strike the evidence offered by Hydropool.

The Commission in Decision (D.) 84-11-123 granted a limited rehearing on the question of Qualifying Facility (QF) interconnection to the Intertie under the terms of an interim solution for transmission constraints in PG&E's service territory. Hearings were held on December 17, 1984, March 28-29, 1985, April 9, 10, and 12, 1985. John E. Kerler, Supervising Power System Engineer, testified on behalf of PG&E. Dennis E. Peseau, Senior Vice President and Senior Economist of Zinder Companies, Inc., Robert K. Weatherwax, Jr., President of Sierra Energy and Risk Assessment, Inc., and Ivan Gold, President of Cogeneration Services, Inc. and managing partner of Hydropool, all testified on behalf of Hydropool. Further hearings were suspended until a ruling is issued on the motions.
[2] PG&E, other utilities, and staff have argued that the intent of the signatories to the interim solution is the only relevant factor. They intended to exclude the Intertie from the interim solution. Accordingly, they

assert Hydropool or any other QF has no right to interconnect to the Intertie under the terms of the interim solution.

PG&E's witness Kerler explained why PG&E has excluded the Intertie from the interim solution. Kerler testified that at the time the interim solution was drafted, PG&E believed no firm capacity on the Intertie would be available for QFs. If QFs were allowed to interconnect to the Intertie, PG&E believed that the QFs would displace cheaper economy power from the Northwest.

PG&E asserts that the QFs which are allowed to interconnect to constrained bulk or area lines under the interim stipulation will cause only temporary operating diseconomies since transmission upgrades have been identified for those lines. Thus, PG&E agreed to allow QF interconnection to those lines because the company believes the lines'

capacity can be increased and the diseconomies will end.

PG&E's evaluation of the Intertie is quite different. PG&E has never believed that firm capacity on the Intertie will be available. Consequently, the company consistently has refused to give QFs any access to the Intertie.

Hydropool responded to PG&E's showing by attempting to show that excess capacity will be available on the Intertie and that other QFs could cause displacement of Northwest economy power.

Hydropool's witness Peseau testified that firm surplus resources in the Northwest and very favorable water conditions have resulted in high utilization of the Intertie in the last four years. [3] Peseau asserted that the Northwest's large surplus should diminish and average water conditions should return in the future. He concluded that the declining firm

surplus with average water conditions should not fill the expanding capacity of the Intertie.

Hydropool's witness Weatherwax examined PG&E's long range plans and determined that PG&E should not use all of its Intertie capacity over the course of any year for the next 20 years. Weatherwax stated that if Hydropool is permitted to interconnect its projects to the Intertie there will not be a one-to-one displacement of Northwest economy power. In addition, Weatherwax testified that other QF projects may cause displacement of Northwest economy power during minimum load conditions. Thus, Weatherwax asserts Hydropool is similar to other QF projects in its impact on the PG&E transmission system.

Hydropool's witness Gold testified that the only economic market for the Hydropool projects is in California and the Intertie is the only transmission path for these projects.

Without Commission approval, Gold stated that Hydropool's projects will not be built.

PG&E Motion to Dismiss

PG&E raises several grounds for dismissing Hydropool's claim in this proceeding. PG&E argues that Hydropool is not entitled to a QF contract, that Hydropool's marketing agreements are not legal under PURPA, and that Hydropool has failed to comply with Decision (D.) 84-08-037. In addition, PG&E maintains that no unlawful discrimination has been shown by Hydropool.

PG&E asserts that since Hydropool is not the owner or operator of its cogeneration and small power production facilities, Hydropool is not a QF under PURPA. PG&E points out that Hydropool is a broker or agent for QFs as it owns only a de minimis 2.5% holding in one facility.

[4] Furthermore, PG&E claims Hydropool even lacked authority to execute power purchase

agreements on behalf of the developers. PG&E asserts that Hydropool's marketing agreements with developers provide that Hydropool is merely to deliver power purchase agreements to the developer for the developer's execution.

PG&E submits that Hydropool is a broker for power and is not a QF. Accordingly, PG&E believes Hydropool's claim should be dismissed.

PG&E next argues that Hydropool's marketing agreements provide for deliveries of utility power at QF prices. The marketing agreements contain "shaping" provisions which permit substitution of a "shaping" utility's power for the QF's generation. PG&E submits that this "shaping" substitution clearly violates PURPA.

PG&E argues that Hydropool has not complied with the interim solution as approved by the Commission in D.84-08-037. The interim solution provided that priority rights for each transmission allocation are not trans-

ferable between projects. PG&E points out that only seven of the fourteen projects mentioned by Hydropool to PG&E in August, 1984, are still being pursued. PG&E asserts Hydropool has substituted other projects for some of the original projects in violation of D.84-08-037.

Finally, PG&E submits that no discrimination has been shown by Hydropool since no QF has been allowed by PG&E to deliver over the Intertie. PG&E points out that Hydropool was offered an opportunity to deliver power on a radial line to a PG&E area transmission line. Furthermore, PG&E claims that it has denied the request of another QF to interconnect to the Intertie. Thus, PG&E concludes that Hydropool has been treated in the same manner as other QFs.

Hydropool Response

Hydropool asks the Commission to deny PG&E's motion for several reasons.

[5] First, Hydropool asserts that PG&E failed

to make its motion upon five days written notice as required by Rule 56. Hydropool claims PG&E has known of Hydropool's agency relationship with its projects as early as November, 1984. Therefore, Hydropool argues PG&E's motion is improper and should be denied.

Hydropool also asserts that it was expressly authorized to act as agent for QF project owners. Hydropool claims that the owners verbally authorized its agency authority and subsequently ratified Hydropool's actions.

Hydropool points out that it has never received a transmission allocation under the interim solution since PG&E consistently has denied all requests for interconnection to the Intertie. Therefore, Hydropool submits it has not improperly shifted an allocation between projects.

Finally, Hydropool maintains that all QFs participating in the interim solution may cause displacement of Northwest economy

power. Thus, Hydropool asserts that the seasonal displacement of Northwest economy power is not a valid basis for excluding only Hydropool's projects from the interim solution.

SDG&E and Staff Motion to Strike

SDG&E moved to exclude the testimony of Hydropool witnesses Peseau and Weatherwax. Counsel for SDG&E argues that the interim solution rationally differentiates between classes of QFs. He asserts the Intertie is significantly different from the rest of PG&E's transmission system and is properly excluded from the interim solution. To SDG&E, interconnection to the Intertie is a price issue which should be addressed in another proceeding.

Staff joined SDG&E in moving to strike the testimony of Peseau and Weatherwax. Staff believes the only relevant issue is the intent of the interim solution. Staff further argues that Hydropool's witnesses have not shown that

one-to-one displacement of economy power will not occur if its projects interconnect to the Intertie.

[6] Discussion

The purpose of the interim solution was to enable QFs in PG&E's constrained northern transmission system to proceed with their projects until these constraints are relieved by transmission upgrades and new transmission lines. The terms of the interim solution were limited to QFs located within PG&E's service territory. The Commission in D.84-08-037 removed the in-service area restriction and stated: "At this time, we do not have sufficient cause to differentiate between QFs located within PG&E's service territory and those located beyond the utility's service boundaries."

PG&E immediately filed a petition for modification of D.84-08-037 asserting that it intended to exclude the Intertie from the

interim solution because interconnection to the Intertie could result in one-to-one displacement of economy power. PG&E also asserted that this displacement would not be relieved by planned transmission upgrades or new transmission lines. PG&E then asked the Commission to exclude the Intertie from the interim solution as a matter of policy.

The Commission declined to exclude the Intertie from the interim solution and instead ordered a limited rehearing on this matter. (See D.84-11-123.)

The issue addressed in the limited rehearing is whether PG&E's proposed exclusion of the Intertie from the interim solution is a reasonable distinction among its constrained transmission lines or unlawful discrimination against a class of QFs.

The California Supreme Court in United States Steel Corp. v Public Utilities Commission, 29 Cal. 3d 603 (1981) set forth

some guidelines for the Commission's determinations on claims of discrimination. The Court affirmed the Commission's wide discretion in prescribing economic classifications but stated that mere administrative inconvenience may not justify an imprecise [7] classification. The Court observed that the Commission's finding of administrative "difficulty" to support a rate exemption was inadequately supported by record evidence. (29 Cal. 3d at 614.) Here it is unlikely that the mere declaration of the signatories' intent would be considered a sufficient basis for the exclusion of one transmission line and QFs in proximity to that line from the interim solution.

The record for this proceeding now contains sufficient evidence for a Commission finding. Prior to hearing, the Commission lacked any evidence apart from a PG&E petition alleging that permanent one-to-one displacement

of economy power could result from QF interconnection to the Intertie. At hearing, PG&E was required to present a witness to substantiate its claim. Hydropool was permitted to cross-examine and was given an opportunity to present rebuttal witnesses. In addition, PG&E stated it wants to present additional evidence should the Commission find that its initial presentation is lacking.

The salient facts developed in the record are as follows.

In recent years, PG&E's capacity entitlement on the Intertie was fully utilized due to above average hydro conditions. Based on this recent experience, the company may predict that all of its capacity on the Intertie could be used in the next few years. Assumption of average hydro conditions would lead to a different conclusion, i.e., capacity will be available most of the year. However, at times such as during the spring run-off

months, the Intertie will be fully used even under average hydro conditions. If allowed to interconnect, Hydropool's projects will displace economy power at these times.

The QFs allowed to interconnect to other constrained transmission lines also may cause displacement of economy power on the Intertie. Under minimum load conditions, surplus area generation may be transmitted from the northern area to the Bay Area over the [8] Intertie. To the extent QF deliveries in the northern area cause a resource-load imbalance, these QFs may displace economy power deliveries over the Intertie if other PG&E resources are not curtailed.

PG&E has claimed that the operating diseconomies expected under the interim solution are temporary. However, the transmission upgrades associated with the interim solution will not relieve a capacity constraint on the Intertie. Thus, the

diseconomy of Intertie back-offs may continue after these upgrades are completed.

PG&E never has allocated firm capacity on the Intertie to a QF. PG&E instead has offered to purchase QF power delivered on the Intertie on an interruptible basis or at prices competitive with economy power.

From these facts, one may find a few differences between QF interconnection to the Intertie and to other constrained transmission lines. First, direct interconnection to the Intertie obviously will displace economy power whenever such power is available to fill PG&E's capacity entitlement. Interconnection to other transmission lines will cause displacement only when such economy power is available and uncurtailed area generation exceeds area load. Consequently, the amount of displacement from QF interconnection to the Intertie may exceed any Intertie back-off caused by other QF interconnection to other

lines. Second, direct interconnection will reduce PG&E's available firm capacity on the Intertie in its negotiations of long term capacity contracts in the Northwest. Other QF interconnections to other lines will not alter PG&E's negotiating posture. Third, PG&E never has represented to QFs that it would accept firm QF deliveries on the Intertie without price concessions. On the other hand, until PG&E's discovery of unforeseen constraints in its northern transmission system, PG&E expected QF interconnection to other transmission lines to occur under the various approved standard offers in the ordinary course of business. Thus, there is a basis for distinguishing the Intertie from other constrained transmission lines.

[9] Ruling

The objective of this proceeding and the interim solution has been to allow QF development to proceed despite the unforeseen

transmission constraints in PG&E's northern transmission system. This objective has been reasonably met by the interim solution without unlawful discrimination against a class of QFs. No further hearings are required on the issue of QF interconnection to the Intertie under the terms of the interim solution. The Commission may modify D.84-08-037 to exclude the Intertie from the interim solution as requested in PG&E's petition for modification. Alternatively, the Commission may deny PG&E's petition and allow Hydropool to participate in the interim solution as a matter of policy.

The various motions to strike or exclude Hydropool's evidence are denied as the Commission should issue a decision based on findings drawn from this evidentiary record. PG&E's objections to Hydropool's standing as a QF will be addressed if the Commission should find that QFs should be allowed to interconnect

to the Intertie under the terms of the interim solution.

Dated July 30, 1985, at San Francisco, California.

/s/ RANDOLPH L. WU
Randolph L. Wu
Administrative Law Judge

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE

STATE OF CALIFORNIA

INVESTIGATION ON THE COMMIS-)	OII No.
SIONS OWN ON MOTION INTO THE)	84-04-077
TRANSMISSION SYSTEM OPERATIONS)	DECISION
OF CERTAIN CALIFORNIA ELECTRIC)	85-09-058
CORPORATIONS REGARDING TRANS-)	
MISSION CONSTRAINTS ON COGEN-)	
ERATION AND SMALL POWER)	
PRODUCTION DEVELOPMENT)	
)	

PETITION OF HYDROPOOL AND
COGENERATION SERVICES, INC.
FOR REHEARING OF DECISION NO. 85-09-058

Date: October 18, 1985

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Parties

[2] I. PRELIMINARY STATEMENT

Cogeneration Services, Inc. and HydroPool, interested parties, (collectively, "HydroPool") hereby petition this commission

for rehearing and reconsideration of Decision 85-09-058 issued September 18, 1985 (hereinafter, "the Decision"). In particular, HydroPool challenges those portions of the Decision and order which exclude the Northwest Intertie from the so-called "Interim Solution." (See typed Decision p.16 et seq.) These provisions effectively bar HydroPool's out-of-state QFs from interconnecting on an interstate transmission line; and retroactively deny them contractual rights under valid Standard Offer 4 contracts.

By excluding HydroPool's out-of-state projects from the "Interim Solution," the Decision violates the interstate commerce and equal protection clauses of the United States Constitution. It also discriminates against HydroPool projects in violation of the Public Utilities Regulatory Policies Act of 1978 (PURPA), and the Public Utilities Code; and exceeds the Public Utilities Commission's

jurisdiction by excessively interfering with interstate commerce. Furthermore, by effectively depriving HydroPool of the benefit of its Standard Offer 4 contracts, the Decision violates the contract and due process clauses of the United States Constitution, and deprives HydroPool of its right to sell power to PG&E under PURPA and FERC regulations promulgated in accordance with PURPA. These are primarily legal issues that can be decided in a modification or limited rehearing at this time. There is no justification for deferring HydroPool's projects to a new generic proceeding, [3] and no new evidentiary hearings are required. HydroPool projects are not in the same position as other out-of-state QFs because HydroPool has fourteen valid Standard Offer 4 contracts and has acted in a timely fashion to preserve its rights to transmission capacity. It should be included in the Interim Solution. Deferring

adjudication of HydroPool's case to be decided in another proceeding involving only out-of-state QFs is discriminatory in itself and may unreasonably defer adjudication of HydroPool's rights until HydroPool is forced out of business by regulatory delay.

II. GROUNDS FOR PETITION

Pursuant to Public Utilities Code § 1732, and Rules of Practice No. 86.1, HydroPool submits the following grounds for reconsideration and rehearing of Decision 85-09-058:

1. The Decision openly excludes out-of-state QFs from the northern California market and thereby unlawfully burdens interstate commerce in violation of the United States Constitution. U.S. CONST., Art. I, §8(3).

2. The Decision invalidates HydroPool's Standard Offer 4 contracts, retroactively altering the obligations of private contract

in violation of the United States Constitution. U.S. CONST., Art. I, §10(1).

3. The Decision's exclusion of HydroPool's out-of-state QFs from the northern California power market denies HydroPool and HydroPool's projects equal protection of the law in violation of the United States Constitution. U.S. CONST., Amend. XIV, §1.

[4] 4. The Decision's exclusion of HydroPool's out-of-state QFs is unlawfully discriminatory because no evidence supports a rational distinction between HydroPool and other QFs that deliver power over the Intertie south of Round Mountain. Cal. Pub. Util. Code §728, 16 USC § 824a-3(b)(2).

5. The Decision is void for want of jurisdiction because it burdens HydroPool's access to an interstate transmission line, an act in excess of the Commission's statutory regulatory authority. Cal. Pub. Util. Code §202.

APPENDIX P, ORIG. PGS. 3, 4

6. The Decision unreasonably defers adjudication of HydroPool's rights by transferring HydroPool's claims into yet another generic regulatory proceeding. This repeated delay is a failure by the PUC to implement PURPA in violation of 18 CFR 292.401.

7. The Decision does not adequately consider the anticompetitive impact of denying out-of-state QFs access to the northern California market, and of perpetuating PG&E's oligopolistic control of sales and wheeling over the Intertie.

8. Finding of Fact No. 9 is not supported by evidence because the evidence shows no more displacement of economy power on the Intertie by HydroPool QFs than by other QFs included in the "Interim Solution."

9. Finding of Fact No. 9 is not supported by the evidence because there was no evidence on the record of QF impact on PG&E's

negotiations for power purchases on the Intertie.

10. Finding of Fact No. 9 is not supported by relevant material evidence because evidence on the record of [5] PG&E's prior unlawful discrimination does not make its present discrimination lawful.

11. Conclusions of Law Nos. 3 and 4 are not supported by the findings or the evidence.

12. The Decision does not contain adequate findings to justify the denial of HydroPool's valid Standard Offer 4 contracts.

13. The Decision does not contain adequate findings to justify exclusion of HydroPool's QFs from the "Interim Solution."

14. The Decision does not contain adequate findings to justify the burden imposed on interstate commerce, the discriminatory classification of in-state versus out-of-state QFs, and other disparate

effects recited above, which result from excluding out-of-state QFs from the Intertie.

III. SUMMARY OF PROCEDURAL BACKGROUND AND FACTS

In April, 1984, the Commission began an investigation into transmission limitations on the PG&E system which may constrain QF development in California (OII 84-04-077, hereafter "constraints case"). PG&E alleged that such limitations exist on its northern bulk and area transmission systems, including the Northwest Intertie line. To accommodate a limited amount of QF development, PG&E and other parties proposed an interim order which authorized: 1,150 MW (originally 990 MW) of new QF interconnections in the northern area; capacity upgrades on selected transmission lines; and uneconomic dispatch to accommodate the new QF power while the upgrades were built.

* * *

Civil No. SF 24966

IN THE SUPREME COURT OF THE STATE
OF CALIFORNIA

COGENERATION SERVICES, INC., and Oregon corporation, and HYDROPOOL, a general partnership, Petitioners,	)
vs.	)
THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, Respondent,	)
[Pacific Gas & Electric Co., Real Party in Interest]	)

Petition for Writ of Review and Points and Authorities in Support Thereof

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APPENDIX Q

Table of Contents

		Page
I.	INTRODUCTION	2
II.	PORTIONS OF THE OPPOSITION BRIEFS SHOULD BE STRICKEN BECAUSE THEY RELY ON MATTERS NOT IN THE RECORD ON REVIEW	3
	A. The PUC's Belated Decision On Rehearing is Void Because It Conflicts With Statutory Procedure; Therefore It Should Not Be Considered Part of the Record	3
	B. The PG&E Letter to ALJ WU Was Not An Exhibit or Testimony, and Therefore Not Part of the Record	5
	C. PG&E's Offer to Compromise Is Inadmissible And Should Not Be Considered Part of Record	6
III.	THE DECISION IS RIPE FOR REVIEW	6
IV.	THE PARTIES CONCEDE THAT THE PUC CANNOT EXCLUDE THE FOURTEEN HYDROPOOL PROJECTS FROM INTERCONNECTING WITH AND SELLING POWER TO PG&E ON THE NORTHWEST INTERTIES: ALTERNATELY, SUCH AN EXCLUSION WOULD UNLAWFULLY BURDEN INTERSTATE COMMERCE AND BE OUTSIDE THE PUC'S JURISDICTION.	8
	A. Respondent and Real Party Concede that PG&E is Obligated to Interconnect with the Purchase from QF's Wheeling Power to the Intertie	8

B. Alternately, Excluding Out-Of-State QFs From the Interim Solution Would Unlawfully Burden Interstate Commerce Because It Is the Only Practical Interstate Access to the California Power Market 9

C. Contrary to PG&E's arguments the burden on interstate commerce caused by exclusion of the out-of-state projects is clearly excessive when weighed against local benefits 12

V. CONTRARY TO RESPONDENT'S ARGUMENT, THE CONTRACTS TENDERED BY HYDROPOOL WERE AUTHORIZED BY THEN-APPLICABLE COMMISSION DECISIONS, AND VALID AS A MATTER OF CONTRACT LAW; THEREFORE, IRRESPECTIVE OF THE COMMISSION'S POWER TO SET CONTRACT TERMS PROSPECTIVELY, IT MAY NOT ABROGATE THE CONTRACTS RETROACTIVELY WITHOUT VIOLATING THE CONTRACT CLAUSE 14

A. The PUC Had Previously Made Standard Offer Contracts Available to QF's Outside The Utility's Service Area, Irrespective of Displaced Economy Power Or Delivery To Bulk Transmission Lines Like the Intertie. 14

B. By Signing And Tendering The Fourteen Standard Offers to PG&E, Binding Contracts Were Formed As A Matter Of Law; And Decision 85-06-163 Is Not Res Judicata On The Issue. 16

C. On The Facts Of This Case The PUC May Not Retroactively Abrogate Valid Power Contracts Between PG&E and HydroPool. 20

D. The PUC's Authority To Prospectively Adopt Different Prices for QFs Is Not Ripe For Review Because It Is. 21

VI. THE DECISION'S DISCRIMINATION AGAINST HYDROPOOL AS AN OUT-OF-STATE QF IS NOT SUPPORTED BY A RATIONAL BASIS. 21

VII. Conclusion

APPENDIX Q

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(Endorsed Filed
October 15, 1986)

SUPREME COURT
OF THE STATE OF CALIFORNIA

COGENERATION SERVICES, INC., and HYDROPOOL, Petitioners, vs. PUBLIC UTILITIES COMMISSION, Respondent, PACIFIC GAS & ELECTRIC COMPANY, Real Party in Interest.	S.F. No. 24966 Notice of Appeal

Petitioners Hydropool and Cogeneration Services, Inc., hereby appeal to the United States Supreme Court, pursuant to the provisions of 28 U.S.C. § 1257(2), from the order and judgment entered herein on July 30, 1986, denying their petition for a writ of review.

Dated Ocotober 15, 1986

Respectfully submitted,
PETTIT & MARTIN

By /s/JEH
Attorneys for Petitioners

APPENDIX R

Prepared Sworn Testimony of Ivan Gold
Before the California PUC

Exhibit No. 12

[2]

(Q1) Please state your name, business address and occupation.

(A1) My name is Ivan Lewis Gold and my business address is 2539 Larkin Street, San Francisco, California. I am President of Cogeneration Services, Inc., and as President, I am a managing partner of the HydroPool Partnership.

(Q2) What is HydroPool?

(A2) HydroPool is a partnership of three companies, Cogeneration Services, Inc., Interalfa, Inc. of Greenwich, Connecticut, and Tornet, Inc. of New York. HydroPool is

involved in the development of hydroelectric and alternative energy projects around the United States. These include several small power producers which plan to sell their firm capacity and energy to Pacific Gas & Electric Company ("PG&E") from plants in Oregon and Washington.

(Q3) Please summarize your educational background
and professional experience.

(A3) I received my bachelor's degree from the University of Pittsburgh in 1968, and my law degree from New York University Law School in 1971. Thereafter, I was law clerk to Chief United States District Judge Gus J. Solomon of Oregon in Portland, Oregon. From 1972 to 1975, I was an associate attorney with the Portland, Oregon law firm of Rives, Bonyhadi & Hall where I worked on public utility matters, primarily for electric and gas utilities. In 1975, I was appointed Deputy Public Utility Commissioner of Oregon, a post I held for eighteen months. In 1977, I served as special

consultant to the Chairman of the [3] Civil Aeronautics Board, regarding the impact of deregulation on the airline industry. In 1978, I returned to Portland, Oregon, as associate and then partner in the Portland law firm of Lindsay, Hart, Neil & Weigler. At that firm, I represented industrial customers of utilities in proceedings before the Bonneville Power Administration, and, later, cogenerators and small power producers. In 1980, one of my clients, Windfarms, Ltd., asked me to join them in San Francisco. I was with Windfarms, Ltd. as Vice President until 1982, responsible for project development and for negotiating contracts with public utilities. After leaving Windfarms, I continued to work on the development of cogeneration, hydroelectric and wind projects at Cogeneration Services, Inc., which I organized in 1979.

(Q4) Have Cogeneration Services, Inc. and HydroPool previously participated in QF cases before the Commission?

(A4) Yes. We have actively participated in the deliberations regarding the "Interim Solution" in this proceeding; have attended several workshops; and filed comments with respect to the Interconnection Priority Procedure. In addition, Cogeneration Services has appeared in the Long-Run Pricing case, Application 82-04-044, now pending before the Commission; and has filed comments in that case. We have been actively involved in soliciting Standard Offer 4 contracts from PG&E on behalf on HydroPool's Northwest Projects, which are involved in this proceeding; and other projects inside PG&E's service territory.

(Q5) What is the purpose of your testimony in this proceeding?

[4]

(A5) The purpose of my testimony is to show that HydroPool has relied on the Commission's prior decisions and policies with respect to QF development by investing work and money in its Northwest Project; that HydroPool has

relied on prior statements from PG&E regarding their willingness to interconnect HydroPool's projects to the Pacific Northwest Intertie; and to demonstrate that, without approval for such interconnection, HydroPool's projects will suffer irreparable injury.

(Q6) Please describe the nature and status of HydroPool's northwest projects.

(A6) HydroPool owns, has an option to acquire, and/or is marketing the output of several hydroelectric and cogeneration projects in Oregon and Washington. Each of these projects is a qualifying facility, as defined by regulations of the Federal Energy Regulatory Commission, and, where necessary, has secured a permit, license, or certification order from FERC or the appropriate government agency. The projects have ranged in capacity from .5 to 33 megawatts and use either falling water or boiler steam as an energy source. Some of the cogeneration projects are currently operational. The other projects, including

all the hydroelectric projects, are at various stages of development. The proposed date of initial deliveries to PG&E from each project varies from early 1986 to early 1989. Thus far, HydroPool and other project owners have invested $631,500 in developing the projects which are not yet operational.

(Q7) How would the northwest projects deliver power to PG&E?

[5]

(A7) On behalf of the projects, HydroPool is negotiating an Intertie access contract with a Northwest utility which will permit the projects to transmit their power to the Malin Intertie substation. At that point, the power would be delivered to PG&E, which is a part-owner of the Intertie. By contract, deliveries at Malin are deemed to take place at the California-Oregon border. The projects' Intertie access would include scheduling, dispatching, firming and banking services to enable each project to deliver its power as firm power, like any other firm

utility-to-utility delivery over the Intertie.

(Q8) Had you ever discussed any Northwest projects with PG&E prior to the commencement of this proceeding?

(A8) Yes. Between 1979 and 1983, I discussed at least five Northwest projects (other than HydroPool's current proposal) with PG&E which would have required interconnection on the Pacific Intertie. In 1979, one of these was the Bingen co-generation project. The others were a Windfarms wind energy project in northern Oregon, the Crown-Zellerbach project at Camas, Washington, the Arcata cogeneration project at Arcata, California, and the Aromas cogeneration project at Klamath Falls, Oregon. I discussed these projects with PG&E's legal department and generation planning department. We specifically discussed the contract pricing which would be system avoided cost, and, later, the interim Standard Offer 4 prices approved by the Commission. In addition, I was told at various times that PG&E would

interconnect projects on the Intertie provided I could arrange to deliver the power to the Intertie at Malin. PG&E, however, refused to assist in any way to arrange wheeling [6] and always predicted we would be unable to arrange deliveries to Malin. In each of these cases, it proved impossible to gain access to the Intertie in the Northwest.

Because of PG&E's position, when I started work on the northwest projects, I concentrated on obtaining wheeling to Malin. Based on the discussions with PG&E, we identified feasible projects; negotiated contracts which committed the project to HydroPool; negotiated wheeling agreements; and continued, with others, site development and initial engineering on the projects.

(Q9) Did PG&E ever change its position with respect to interconnecting your Northwest projects on the Intertie?

(A9) Yes. In approximately May 1984, I advised PG&E that HyrdoPool could deliver power to the Intertie at Malin. At the time

PG&E's generation planning department advised me that it would not interconnect HyrdoPool's projects, because 1) it was not obligated to contract with out-of-territory QFs; 2) it did not want private parties to utilize the Intertie; 3) it did not need any more power; and 4) it would only purchase from our QFs on the same terms as inter-utility sales.

(Q10) What kind of contracts did HydroPool's projects offer to execute with PG&E for the Northwest project?

(A10) HydroPool tendered Standard Offer 4 contracts to PG&E for several of its northwest projects. Each contract proposes to provide firm capacity for a 20 year term; requests Energy Payment Option 2--levelized energy prices, as defined in the Standard Offer; and elects Curtailment Option A, hydro spill and negative avoided cost.

[7]

(Q11) Of what importance is the Standard Offer 4 contract to the HydroPool projects?

(A11) The terms and conditions of Standard

Offer 4 are most important to the success of QF projects such as the HydroPool projects. For example, the firm capacity and the levelized energy pricing options provide assurance that a project will obtain predictable prices for its sales of capacity and energy. Another example is the curtailment provisions of Standard Offer 4 which limit the periods during which the utility may curtail purchases from the QF. Using these terms, and applying them to technological information such as hydrologic studies on a hydropower project, the QF developer can estimate his likely energy output and sales volume in future years for purposes of a business plan. If feasible, the project will show sufficient sales revenues to absorb the up-front costs of permits, engineering and construction, and the continuing expense of debt services, operations and maintenance. Investors and lenders review this business plan to determine if the project is feasible and credit-worthy.

Without the certainty and pricing which Standard Offer 4 provides, project developers and owners cannot obtain the financing necessary from investors and financial institutions. Since generating facilities are capital intensive, the obtaining of financing is a prerequisite to the successful completion of any QF project. For projects which have significant operating costs, such as cogenerators, predictable, fixed pricing permits a decision on whether a long-term economic commitment can be made to operate under the requirements of a firm power [8] contract. It is common knowledge that QF projects cannot be financed, built or operated on the basis of whatever avoided costs happen to apply from day-to-day. Without a Standard Offer, HydroPool could not obtain the financing needed to complete its projects.

(Q12) Did you contemplate using Standard Offer 4 in developing the HydroPool projects?

(A12) Yes. My earlier discussions with PG&E included use of avoided-cost pricing, and,

later, the newly-adopted, interim Standard Offer 4. I understood that the Commission's prior orders in the OIR-2 proceedings did not discriminate against QFs located outside of the service territory in making Standard Offer 4 available. I therefore planned on using the Standard Offer 4 contract while developing the HydroPool projects and negotiating for wheeling agreements and financing agreements.

(Q13) When did you become aware of the possibility of transmission constraints on PG&E's northern bulk system.

(A13) After the Commission investigation commenced, HydroPool was advised of a series of workshops sponsored by Public Staff to discuss the transmission constraints issue. Our staff, and consultants attended several of these workshops which ultimately led to the proposal of the so-called Interim Solution Stipulation.

(Q14) Did the workshops discuss any special provision for deliveries to the Pacific Intertie?

(A14) From the reports provided me by my staff and consultants who attended the workshops, I understood that the Intertie line was affected by transmission [9] constraints on the bulk system and that the proposed interim solution would not affect HydroPool's plans to interconnect on the Intertie one way or the other.

(Q15) Did your understanding in this regard change at any time?

(A15) Yes. After the proposed stipulation for an interim solution was published last summer, the language appeared to limit the interim solution to only those QFs who were physically located within PG&E's northern service territory. HydroPool then moved that the Commission delete this limitation in its order.

(Q16) Has HydroPool taken any steps to obtain transmission capacity from PG&E for its Northwest projects?

(A16) Yes. After the commission's August 1, 1984 decision, which removed the "service area"

limitation and included our projects, HydroPool again requested transmission capacity from PG&E. A copy of this request is attached as Exhibit -A hereto.

(Q17) Did PG&E respond to your request for transmission capacity?

(A17) Yes. PG&E advised me that it had reserved 66.2 megawatts of the 990 megawatts (now 1150) which the Commission had established in the order approving the interim stipulation. But it contended that the interim order did not include HydroPool. PG&E would not move forward with an interconnection study, provide me with an estimate of the cost of such a study or move forward with executing a Standard Offer. A copy of PG&E's letter reserving capacity is attached hereto as Exhibit -B.

[10]

(Q18) Has HydroPool taken and further steps to obtain a contract with PG&E for their output?

(A18) Yes. We tendered signed contracts to PG&E for several of the projects. However, PG&E has refused to sign them because of the pendency of this proceeding. In addition HydroPool tendered an interconnection fee of $16,000 to PG&E and requested that it commence an interconnection study for the HydroPool projects. PG&E returned this check to us. A copy of our letter providing this information is attached as Exhibit -C.

(Q19) Has HydroPool offered to abide by the terms of the Interim Solution approved by the Commission?

(A19) Yes. In our letter of August 7, 1984 we specifically advised PG&E that we were willing to enter into the special agreement to abide by the Interim Solution and pay the surcharge called for by that order.

(Q20) Has HydroPool complied with the steps called for by the Interconnection Priority Procedure?

(A20) PG&E advised us that we are not required to take these steps until we receive

an allocation of capacity. We never even received an IPP questionnaire from PG&E to complete. However, we have tendered signed Standard Offer 4 contracts to PG&E and requested an interconnection study. We have also submitted the small power survey with the necessary project information, after receiving it from PG&E. We are further prepared, if required, to pay the $5/KW fee if the Commission permits the HydroPool projects to proceed. This sum would total approximately $331,000.

(Q21) How has the pendency of PG&E's Petition For Modification affected the HydroPool projects?

[11]

(A21) The impact has been severe. The uncertainty created by this proceeding has caused our investors and lenders to become most cautions in committing further funds for the necessary engineering, site-permitting and other expenses necessary for development to proceed apace. In addition, the need for

representation has generated considerable legal expense to HydroPool. Most importantly, the delay by PG&E puts our projects at the risk of changes in the price and/or terms of Standard Offer 4 which has not yet been finally approved by the Commission. Any adverse change in the terms of the contracts would generate more uncertainty and scare-off our owners and investors.

As of today, it is possible that some of HydroPool's original projects never will be built, and some of the cogeneration projects will be mothballed. If that were to happen, HydroPool could, to some degree, still fill the 66.2 megawatt limit by increasing the contract or design output of some of its other projects. At some point, however, we will lose the benefit of our right to sell power to PG&E, our long-term efforts, a $631,500 investment, and our total compliance to date with the spirit and the letter of this Commission's orders. It is most important that the Commission decide this issue

expeditiously. We twice notified PG&E of this problem. A copy of our letters are attached as Exhibits -C and D.

(Q22) What will happen to the HydroPool projects if they are not permitted to interconnect with PG&E on the Pacific Northwest Intertie?

[12]

(A22) The hydro projects will die, and the co-generation plants will wither on the vine. The only economic markets for these projects are in California. The only way to reach California is over the Intertie. There are no other existing transmission lines over which our projects can both wheel power and deliver it to the PG&E system.

(Q23) How much power does HydroPool plan to deliver to PG&E if permitted to interconnect on the Intertie?

(A23) Based on the ultimate mix of projects selling to PG&E, the projects will deliver annual energy of roughly 500 Gigawatt/hours. This is approximately 4% of the total Intertie

purchases for 1986 forecasted by PG&E's Mr. Kerler in Exhibit No. 3 in this proceeding.

(Q24) What other projects propose to deliver to PG&E over the Intertie under the interim Solution?

(A24) To my knowledge, none. PG&E's original list of projects eligible for transmission capacity in the constrained area showed 92 projects, besides HydroPool, none of which interconnect to the Intertie. According to PG&E, 124 other projects are on the waiting list for an allocation of transmission capacity in the constrained area, and none of these propose to deliver over the Intertie.

(Q25) Does this complete your prepared testimony?

(A25) Yes it does.

Exhibits Introduced Before the California PUC in Connection with the Testimony of Ivan Gold

August 7, 1984

Elmer Hall
Pacific Gas and Electric Co.
77 Beale Street
San Francisco, CA. 94106

Dear Elmer:

As your know, HydroPool by letter to you dated August 2, 1984, requested interconnection of several projects which it is developing in northern California. HydroPool also is involved in the development of various hydroelectric projects, and one wood waste-fired cogeneration project in the Pacific northwest. Each of these projects will be, or is, a qualified facility (QF) pursuant to the Public Utilities Regulatory Policies Act of 1978 (PURPA). We hereby request that PGandE interconnect with and purchase the power from each QF, listed herein, pursuant to the provisions of PURPA and relevant decisions of the California Public Utilities Commission.

Each QF will sell power to PGandE on a firm basis pursuant to PGandE's Standard Offer No. 4, for a term of not less than fifteen years. Each QF will deliver power to the PGandE system at the Malin substation of the Pacific Northwest-Pacific Southwest Intertie. HydroPool will take responsibility for arranging the delivery, dispatch, metering and scheduling of such power to PGandE's system.

HydroPool does not believe that any special facilities are required for interconnection of these QFs with the PGandE system. However, each QF will pay the reasonable cost of any interconnection study which might be required.

Exhibit 13-A
(cont'd.)

HydroPool acknowledges that PGandE contends that it is experiencing or expects to experience transmission limitations on its bulk transmission system, including the Pacific Northwest-Pacific Southwest intertie, and on its area transmission system. Accordingly, each QF agrees to be bound by the provisions of the CPUC's Interim Order No. 84-08-037, dated August 1, 1984.

* * *

[3]Please provide HydroPool with cost estimates for any necessary interconnection studies and contact us to schedule when we might meet to commence discussions with regard to the Power Purchase contracts which must be executed for each of these projects. Please also indicate to us the transmission priority which these projects will have.

We appreciate very much your cooperation in this matter.

Very truly yours,

/s/

Ivan Lewis Gold

ILG:ba
cc: E. Lozowicki, Pettit & Martin

Exhibit 19

January 8, 1985

Mr. Doug Wagoner
HydroPool
2539 Larkin Street
San Francisco, CA 94019

Dear Mr. Wagoner:

I have reviewed your November 26, 1984 letter and offer the following as my response.

As stated in my November 9, 1984 letter to you, PGandE believes that it is not obligated under Decision No. 84-08-037 to allocate transmission capacity to QF projects, such as yours, which would deliver power on the Intertie, and therefore has not done so. However, since this matter is pending before the CPUC, we are currently holding in reserve 66.2 MW which could be made available to HydroPool if the Commission so requires. Any allocation of such capacity will be made in accordance with the appropriate Commission Orders. Decision No. 84-08-037 applies only to QFs in the Northern portion of PGandE's service territory which execute a Power Purchase Agreement and pay for a detailed interconnection study. However, should the CPUC ruling require PGandE to allocate transmission capacity under this Decision to HydroPool, HydroPool will be given a specified time (originally I quoted 2 weeks) in which to satisfy these two criteria.

Although you delivered signed Standard Offer No. 4 contracts for seven of your projects, those contracts are invalid. First of all, we do not believe it is appropriate to execute an agreement to buy your power until the CPUC determines that your projects are eligible under the Stipulation. Secondly, the Standard Offers are inapplicable to projects outside the PGandE service territory. If the CPUC

determines you are eligible, we will certainly permit you to take steps necessary to complete that eligibility.The seven (7) Standard Offer No. 4 power purchase agreements that were delivered to our office November 16, 1984 were completed incorrectly. In each contract, Article 3(d), maximum rate of delivery, cannot be determined until a detailed interconnection study has been completed for the facility. Additionally, the firm capacity amount that should be inserted in Article 5 will have to be determined by PGandE after HydroPool submits, and PGandE reviews, a theoretical operation study for each project as referenced in Appendix E, Section 3-7 of the power purchase agreement. Also, as pointed out in your November 26 letter, "Firm capacity availability date" should have been included in Article 12, Term of Agreement, instead of "date of initial energy deliveries".

[2]
You also state in your November 26 letter that you recognize the need for additional "agreements" between HydroPool and PGandE to address these circumstances that are unique to delivery of wheeled power to Malin (i.e., metering, scheduling, etc...), rather than direct interconnection to the PGandE transmission system. This is essentially correct, although those "agreements" must be embodied in the Power Purchase Agreements and not in separate documents. For that reason, a standard power purchase agreement is not workable for out-of-area projects. Project-specific issues must be incorporated into a negotiated non-standard power purchase agreement for each project. Should the CPUC require PGandE to allocate transmission capacity under Decision 84-08-037 to HydroPool, PGandE would be willing to allow HydroPool to execute an interim document

Mr. Doug Wagoner January 8, 1985

dealing with power purchase and pay for an interconnection study(s) to satisfy the two criteria required of QFs to participate in Decision 84-08-037. Sufficient time will then be allowed for development of the non-standard power purchase agreements mentioned above. Additionally, documentation demonstrating that wheeling and scheduling satisfactory to PGandE will be available to deliver the power from your proposed projects to the PGandE system will be required before power purchase negotiations can be concluded.

With respect to the $16,000 check also delivered to us November 16, 1984 for a detailed interconnection study for these projects, study costs identified on our flat fee table are not applicable to out-of-area projects because of their unique nature. Among other factors, we will need completed interconnection questionnaires (forms attached) for each project before we can determine if one (1) or fourteen (14) interconnection studies will be required. Therefore, we are returning your check and, should the CPUC rule in HydroPool's favor as described above, we will then determine the engineering advance that will be required for PGandE to perform a detailed interconnection study and request that amount from your.

Please call Mr. Tom Jefferson at (415) 972-4153 if you have any additional questions or would like to discuss this further.

Sincerely,
/s/
E. E. Hall

GTJefferson(4153):tb
Attachment
bcc: LHEverett
RCJones
MSHindus

APPENDIX T, ORIG. ATTACH.

COGENERATION SERVICES, INC.
2539 LARKIN STREET
SAN FRANCISCO, CALIFORNIA 94109
(415) 885-0343

DATE	INVOICE	AMOUNT	

1155

11-35
1210

PAY ---SIXTEEN THOUSAND AND NO/00---------- DOLLARS

PACIFIC GAS AND ELECTRIC CO

DATE NOVEMBER 16,1984 $ --16,000.00

TO THE ORDER OF

BANK OF AMERICA
SAN FRANCISCO MAIN OFFICE SAN FRANCISCO, CA 94104

⑈001155⑈ ⑆121000358⑆00337⑈02667⑈

Excerpts from Prepared Sworn Testimony of James Malinowski Before the California PUC.

* * *

[3]

Q7. What is the purpose of your testimony?

A7. The purpose of my testimony is to demonstrate that transmission capacity is not currently available for QF development in PGandE's system and to describe how PGandE plans to provide that capacity. In Addition, I am proposing that CPUC permit PGandE to absorb through rates the reasonable costs of non-dedicated transmission upgrades necessary to take QF power.

[4]

Introduction

As California utilities, CPUC, and QFs have all recognized, QF development in California in the 1980s has taken all parties by surprise. From 1980 to 1984, the number of megawatts (MW) QF contracts signed by PGandE increased thirtyfold, and the number of operational MW increased by 1,256%.

Year	CUMULATIVE MW Contracted	Operational
1980	204	75
1981	885	113
1982	1,187	241
1983	2,298	566
1984	6,593	942

This unexpected increase in QF power outstripped the available capacity of the transmission system in the northern portion of PGandE's service territory. This situation could not be remedied quickly, since the lead times for major transmission projects generally exceeded the lead times for QF projects.

As PGandE became aware of the limited transmission capacity for QF generation in the northern portion of its service territory, PGandE notified the Commission staff. As a result, on April 18, 1984, the Commission issued OII 84-04-077 to investigate whether transmission constraints exist for the state's electric utilities which limit QF development.

[5] The OII requested PGandE and other utilities to respond to a series of questions by June 1, 1984. PGandE's response indicated that no firm capacity was available for additional QF development on the bulk and several area transmission systems. That filing also identified potential bulk and area transmission upgrades in the northern area which could accommodate 1,150 MW of QF development. This testimony discusses in detail the transmission constraints, as well as PGandE's plans for providing reinforcements needed for QF development beyond 1,150 MW.

Specifically, this testimony:

- o presents an overview of the PGandE electric transmission system;

- o demonstrates that no firm spare capacity is available on the northern bulk system and on a number of area transmission systems;

- o provides the estimated cost and expected operating date of identified potential transmission upgrades;

- o proposes how the cost responsibility of the upgrades should be treated;

[6] - o proposes to refund 1.2 mills/kWh to QFs who are included within the Interim Solution, but proposes to continue the 0.5 mills/kWh assessment for the life of the contract to the stipulated 1,150 MW; and

- o presents a plan to accommodate QFs beyond the first 1,150 MW of northern QFs.

Electric Transmission System

The PGandE area and bulk electric transmission system is shown in Attachment 1 in the Appendix.

The area transmission basically consists of 60 kV and 115 kV systems and 230 kV radial lines. These lines connect the area loads and generation resources to the bulk system. They transmit generation which the local load does not absorb to the bulk system.

The bulk transmission consists of 230 kV systems and 500 kV lines. The 230 kV systems carry generation to the areas where it is needed (load centers). The 500 kV lines carry some surplus generation and transfer it to the 230 kV system. However, their primary use is to transfer power from the Oregon border to central and southern California. [7]

Existing Transmission Capacities

Bulk Transmission

The availability of bulk transmission capacity is affected by a complex and changing array of variables. These variables include existing and future load levels and patterns, and existing and future generation levels and patterns.

In PGandE northern area, generation consists of area hydro, imports (from the Northwest and Sierra Pacific), Geysers, Rancho Seco, other entities, and QF projects.

Given anticipated load and resources, including anticipated levels of QF generation, PGandE expects the capacity of portions of its northern bulk transmission system to be exceeded in the next ten years (and beyond) during certain hours of each year. Therefore, no firm capacity is available.

In the southern part of its system, PGandE continuously monitors QF development in an effort to anticipate transmission needs and has recently informed the CPUC of possible lack of available capacity in certain areas should large enhanced oil recovery (EOR) projects develop.

The short lead time of most QF projects relative to that of many transmission reinforcements means that there may be some periods [8] of time in which QF generation and transmission capacity, prior to completion of reinforcements, are not perfectly matched.

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

As shown below, the northern area already has considerably more resources than can be absorbed by the local load.

Load, Excluding System Line Losses (MW)
and
Resources, Excluding Northwest Import (MW)

Main Area	Installed Capacity	Typical Resources On Line	Peak Load	Surplus Resources	Resources Needed To Meet Load
Northern	8,892	7,290	5,328	1,962	-
Bay Area	4,670	2,232	5,540	-	3,308
Southern	7,290	5,366	5,062	304	-

Northern Area includes SMUD and Humboldt, Shasta, Colgate, Drum, De Sabla, North Bay, Sacramento, and Stockton Divisions.

Bay Area includes San Francisco, East Bay, and San Jose Divisions.

Southern Area includes MID, TID, and San Joaquin and Coast Valleys Divisions.

The above data represent the anticipated system peak load condition in summer 1985. In this scenario, the northern area has surplus resources of 1,962 MW. If 2,800 MW of Northwest import were added, the surplus would be 4,762 MW. Most of this surplus will be transmitted to meet Bay Area load requirements. The rest will be exported

to southern California and also will account for the system line losses. This transfer of power from the northern area to the Bay Area and southern California will load up some transmission lines to their capacity. Therefore, any amount of QF generation added in the northern area would [9] cause some transmission lines to overload (to carry power beyond their design current carrying capacity).

In September 1983, PGandE conducted a study on the northern half of its system to determine whether the existing bulk transmission system would have available capacity for QF development after January 1, 1984. Two conditions were examined for 1984: The summer peak, and spring partial peak. The study showed that the existing bulk transmission had no available capacity for firm transmission of QF power. Adding QF power after January 1, 1984 would, under normal conditions (with all lines in service), overload the following 230 kV lines and 500 kV capacitors:

a. Gold Hill-Tesla

b. Rancho Seco-Tesla

c. Bellota-Tesla Nos. 1 and 2

d. Tracy-Tesla Nos. 1 and 2

e. Vaca-Dixon-Contra Costa Power Plant (CCPP) Nos. 1 and 2

f. Vaca-Dixon-Moraga Nos. 1 and 2

g. Round Mountain-Table Mountain 500 kV series capacitors

The table below summarizes the amount of overload as a percentage of the normal design capacity of the transmission line or capacitor when either 300 MW or 1,150 MW of northern QFs are added. The amount beyond 100 percent indicates the amount of overload. For example, 109 means that the line is overloaded by 9 percent.

[10] The normal design of the line was based on the summer rating for the conductor. This rating is used to determine the maximum continuous load allowed on the conductor at conditions including an ambient temperature of 109.4^{o}F and wind velocity of 2 feet per second.

	Percent Loadings System Load Condition		
	Summer Peak		Spring Partial Peak
230 kV Line	300 MW	1,150 MW	300 MW
Gold Hill-Tesla	63	74	109
Rancho Seco-Tesla	61	70	118
Bellota-Tesla Nos. 1 and 2	59 & 65	70 & 77	146 & 157
Tracy Tesla Nos. 1 and 2	34	46	108
Vaca-Dixon-CCPP Nos. 1 and 2	96 & 102	104 & 111	97 & 107
Vaca-Dixon-Moraga Nos. 1 and 2	95 & 103	106 & 107	105
500 kV Series Capacitors			
Round Mountain--Table Mountain	98	103	106

These line overloads are also shown in five power flow diagrams (Attachments 2, 3, 4, 5, and 6).

The study assumed that the Castle Rock Junction-Lakeville 230 kV line would be in operation in November 1984 and the Lakeville-Sobrante 230 kV line in November 1985. The study also assumed that the existing 500 kV series capacitors between Table Mountain and Vaca-Dixon and between Table Mountain and Tesla would be uprated from 1800 amps to 2667 amps in summer 1984.

[11] The Castle Rock Junction-Lakeville line was put in operation as scheduled and the Lakeville-Sobrante line is on schedule. However, the 500 kV series capacitors at Table Mountain were not operating during 1984 due to delays in construction. All uprated series capacitors are now scheduled to become operational in September 1985. This change does not change our conclusion. Therefore, the bulk transmission system would have no available capacity for firm transmission of additional QF power.

Area Transmission

PGandE also determined that constraints existed on some area transmission systems in the northern part of our system. Most of the northern area of PGandE's service territory can best be described as rural or suburban. As a result, the electrical load density in most of the area is small compared to metropolitan areas. Moreover, load growth in much of the northern area has been low. These conditions have resulted in long transmission lines, usually 60 kV or 115 kV, of relatively low capacity. These connect the area loades and resources to the bulk 230 and 500 kV system. Given these conditions and the fact that the northern area already has generation resources in excess of load and the disparity in leadtimes between transmission projects and QF projects, it was nearly inevitable that QF development in many areas would cause the need for reinforcements.

[12] Attachment 7 lists generation, loads and transmission capabilities of the constrained areas in the northern part of

PGandE's system. Attachments 8-1 to 8-11 describe in detail the constraints and possible upgrade for each of the areas.

* * *

[15]

Refund 1.2 mills/kWh to QF But Continue 0.5 mills/kWh Assessment

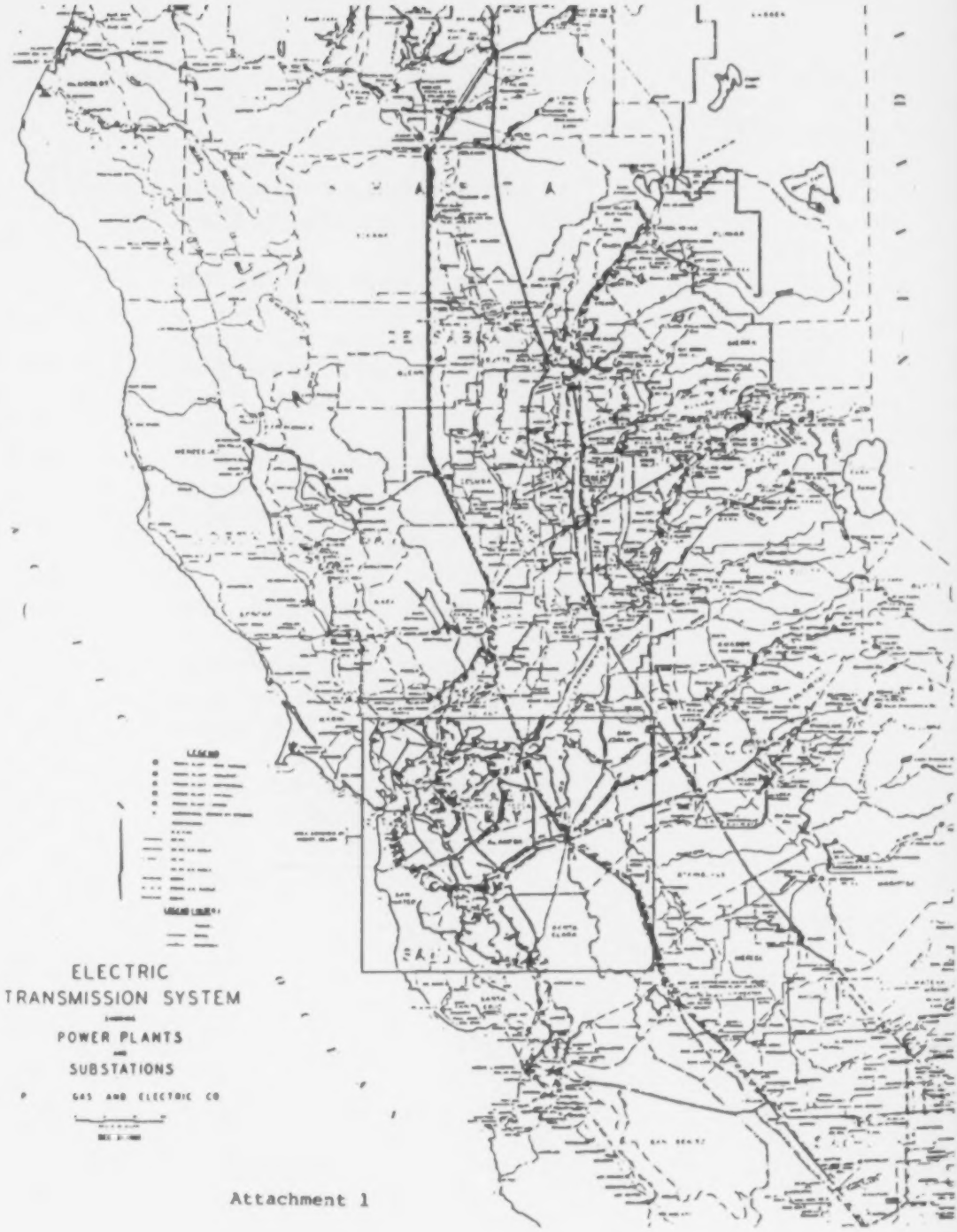
On August 1, 1984, the CPUC adopted the Interim Solution in Decision 84-08-037. The Interim Solution allowed QFs included in the stipulation to connect in PGandE's northern transmission system. In return, these QFs were assessed 1.7 mills/kWh for the energy received by PGandE. The CPUC authorized PGandE to take operational measures, including non-economic dispatch of power, to accommodate these QFs until PGandE completed the needed upgrades.

Under the terms of the stipulation, 0.5 mills/kWh of the 1.7 mills/kWh is non-refundable. All or some of the remaining 1.2 mills/kWh could be refunded depending on the final decision of the CPUC in this proceeding.

APPENDIX U, Orig. pgs. 12, 15

Since PGandE has proposed to absorb the cost of non-dedicated transmission upgrades, PGandE proposes to refund in lump sum [16] without interest 1.2 mills/kWh paid by the QF prior to the Commission's final decision. However, PGandE believes that 0.5 mills/kWh should continue to be assessed throughout the life of the contract. This position is based on the fact that PGandE will have to take non-ecomonic measures in order to accommodate up to 1,150 MW of QF power prior to completion of the upgrades.

For example, if PGandE reduces the Northwest import in order to take up to 1,150 MW of QF power, it estimates that the cost to the ratepayer would be from $64 million to $84 million per year. Therefore, PGandE also proposes that it is just and reasonable that the QFs covered by the stipulation continue to pay the 0.5 mills/kWh for the entire life of their projects.



Attachment 1

APPENDIX U

POTENTIAL BULK TRANSMISSION UPGRADES FOR UP TO 2,000 MW OF NORTHERN QF

		Estimated Cost (in Million of 1984 Dollars)
o	Upgrade Round Mountain series capacitors.	26.1
o	Build new Table Mountain - Tesla 500 kV line and install series capacitors and transformer banks at both ends.	154.8
o	Replace conductors of Weber-Tesla section of the Bellota-Tesla 230 kV DCTL with SSAC	7.5
o	Add two circuits of two 3,500 kcmil cables at the underground section of Castel Rock Junction-Lakeville line.	5.4
o	Rebuild the Lakeville-Vaca-Dixon 230 kV DCTL with 2-1113 kcmil AAL conductors.	27.8
	TOTAL	221.6

Excerpt from Prepared Sworn Testimony
of John Kerler before the
California PUC

[4]

* * *

Q8. Could a third party such as a QF utilize PGandE's unused intertie capacity?

A8. During those hours that PGandE's intertie capacity was not being fully utilized due to minimum loads on the PGandE system, each additional megawatt hour scheduled to PGandE would require backing down an additional megawatt hour of Northwest economy energy or a lower cost resource in the PGandE area. Depending on the situation it would be either nuclear, geothermal or hydroelectric generation. During most other situations that PGandE's intertie capacity was not fully loaded it would be difficult to utilize the unused line capacity.

[5] Energy delivered to PGandE is scheduled at least 30 minutes in advance of the hour by BPA. They do not normally make schedule changes closer to the hour. Only during those relatively few hours each year

that Northwest supplies are insufficient to fill the intertie would a third party be able to utilize the unused capacity even though it would be difficult to know in advance when this situation would occur.

Q9. Does BPA's intertie access policy have any effect on PGandE's ability to fully utilize its intertie capacity?

A9. The BPA intertie access policy was implemented in September 1984. While it is expected to increase the price that PGandE pays for Northwest energy it does not appear that it will decrease the availability of Northwest energy. The proposed BPA rate increase to be effective for the period July 1, 1985 through September 30, 1987, has a maximum rate for surplus firm power of 29.0 mills per kilowatthour which is below our current cost of fossil fueled generation. It is expected that beyond 1987 BPA will price their energy so as to be competitive with fossil fueled energy.

Q10. How will proposed upgrades in the rating of the Pacific Intertie capability affect PGandE's use of its intertie capacity? [6]

A10. An increase in the rating of the 800 kV DC line from 1560 MW to 1960 MW is expected in February 1985. PGandE is entitled to 25% of this 400 MW increase or 100 MW. A proposed upgrade of the 500 kV AC lines from 2800 MW to 3200 MW is anticipated sometime after 1986. PGandE is entitled to 50% of the proposed 400 MW increase or 200 MW. In forecasts developed for 1984 through 1988 I have assumed full utilization of the additional intertie capacity subject only to an estimated 5% limitation in 1984 through 1986 and 10% in 1987 and 1988.

Q11. In sum, is it your testimony that Northwest Power will be available to fill the Intertie at least through 1988?

A11. Yes.

* * *

Excerpts from Transcript of Pre-Hearing Conference Before California PUC on Petition of PG&E and IEP to Exclude HydroPool from the Terms of the Interim Solution.

* * *

[71]

MR. HINDUS: Your Honor, obviously, you are going to be the first one to make a decision on these comments. The Commission will ultimately make a decision.

I am concerned that there has been nothing stated here as to why the parties who drafted the stipulation are standing by it.

I am not an engineer. Ms. Fellman isn't an engineer. There hasn't been any evidentiary hearings on this issue.

But I will try to explain as distinctly as I can.

But basically, the power that is delivered to us directly on the 500 kV line mostly through or that would be delivered to use mostly through the PP&L system directly displaces Northwest Energy on a one-to-one basis.

* * *

[77] MS. FELLMAN: The staff position today is that, again, we support the stipulation as drafted. If the Commission finds that there are reasons to include additional QFs outside of the PG&E service area or ourside of the, I should say, the basis of the stipulation, the [78] projections of QFs, then the staff would not be able to support that Commission decision because we have not identified what the ratepayer impacts would be, not only from so-called diseconomies which I don't even want to get into today in terms of the detail of that, but I will only say that again, when we're dealing with specific areas outside the PG&E service area, the impacts on the ratepayers are geometric rather than arithmetic because there's a direct one-to-one competition not only for the 500 kV line, but also for lines in the northeastern portion of the service area.

* * *

[91] MR. HINDUS: The stipulation is clear on its face. There are no upgrades on the

intertie that PG&E agreed to build under the stipulation.

Futhermore, there are no upgrades on the intertie or any interties that are built to take more QF power.

Therefore, what Cogeneration Services is asking for is not interim. They are asking for a right to displace economy energy permanently for the life of their contract.

Secondly, the interim solution stipulation is a solution. It identified the problem and it seeks to resolve this problem through the agreed upon upgrades.

There is no solution proposed for the intertie. There are no upgrades proposed for the intertie in order to take QF power.

* * *

Excerpts from Transcript of Hearing Before
California PUC on Petition of PG&E
and IEP to Exclude HydroPool
from the Terms of the Interim Solution

* * *

[16] MR. HINDUS: Just to summarize very briefly the thrust of the statement that I gave last week, I emphasize that the interim solution was intended to be only interim, not only until upgrades were built, that the upgrades were specifically identified in Attachment 1 to the stipulation, that the attachment gave a full description of each line that was to be upgraded, its costs, its estimated completion date and that the Attachment 1 provided no upgrade at all for the intertie.

I also indicated last week that we would not have supported the stipulation if it included the intertie.

[17] And if the Commission had issued this as an order including the intertie, we would have appealed that order.

APPENDIX X, pgs. 16, 17

Miss Hamrin and Miss Fellman indicated that the stipulation didn't cover other areas in which there were differences between the parties, areas in which we could not agree.

And we also emphasized that the stipulation is not the end of the OII. It is just the beginning.

The stipulation was not intended to because it could not possibly resolve all issues, all areas, all projects.

There are issues to be determined in this OII 56, a full investigation. And the parties who participated in drafting the stipulation clearly believe that the question of QF access to the intertie is one of those areas that could only be determined after a full investigation.

Now, since all the parties who drafted the stipulation agree on the intent of the stipulation, as a matter of law, that should be the end of this issue.

But there is another issue, and your Honor asked us to present the reasons for this intent to exclude the intertie from the

stipulation. In other words, you were asking us: Was there a reasonable basis for this, or was this something that we just took out of the air in sort of an irrational moment [18] at the hours of a negotiation?

The testimony that PG&E will present today will show that PG&E did have a reasonable basis for excluding this stipulation -- excluding the intertie from the stipulation, and that this exclusion was not discriminatory.

And the reasonable basis that this testimony will show is that QF power on the intertie would displace economy power nearly one for one.

* * *

[37] MR. LOZOWICKI: Q In other words, you don't have -- PG&E does not have enough room given the current entitlements to accommodate both what it would like to buy in the way of economy power and QF power that has been tendered by my client?

MR. KERLER: A Physically, there is a fixed amount of capacity on the intertie. And based on again the economics,

we would be displacing a lower cost resource to take a QF megawatt on the intertie.

MR. LOZOWICKI: Q One way of solving that capacity problem would be to build more capacity on the intertie; wouldn't it?

MR. KERLER: A Additional line capacity would certainly open up additional ability to transmit power into the area.

However, there are times again, even with the additional line capacity, due to minimum load situations, additional capacity may be required to offset lower cost generation in our own area.

MR. LOZOWICKI: Q And part of minimum load in your own area that you are referring to is the QF supplies available in PG&E's --

MR. KERLER: A Between those periods, they can't be backed down. That is correct.

MR. LOZOWICKI: Q Okay. Is it also true that PG&E is currently negotiating

for the construction of additional capacity on the intertie?

[38] MR. HINDUS: I am going to object, your Honor. I don't see what this has to do with the intent of the stipulation.

* * *

[40] MS. FELLMAN: Our discussion during the stipulation did not include any discussion of upgrades on the intertie.

It was my understanding that the hearing today would be limited to the bases upon which PG&E kept this intertie out of the stipulation and the intent of doing so.

* * *

[42] MR. LOZOWICKI: Your Honor, the only fact I would seek to prove in this line, if I can make an offer of proof, is that some plans are in the workings.

I don't plan to go into that in details of the line.

MR. HINDUS: Your Honor, I continue my objection. If he is allowed to continue to ask questions on it, I would --

ALJ WU: Take exception?

MR. HINDUS: Take exception, and also state this is not the appropriate witness.

MR. LOZOWICKI: Your Honor, would they be willing to stipulate that the negotiations are -- we all know they are going on. If we can get a stipulation, there won't be any need for the questions.

ALJ WU: Is PG&E willing to concede to something that is going on?

MR. HINDUS: I am willing to make a stipulation on the negotiations for a third line which will transmit its entire capacity of economy energy to California.

That is the only stipulation I am willing to make.

[43] MR. LOZOWICKI: May I have a minute, your Honor.

ALJ WU: Off the record.

(Off the Record)

ALJ WU: Back on the record.

MR. LOZOWICKI: In response to a data request from Cogeneration Services, my client, Pacific Gas and Electric was asked with

respect to their plans for the construction of new AC and DC lines on the Pacific Northwest intertie.

They made the following response in their data request:

> PG&E objects to this request because the state of the third AC line is beyond the scope of the interim solution since it would not be operational until 1990 at the earliest, and because there were no definite plans for that line when the interim solution was drafted. Without waiving this objection, PG&E notes that as of December 12, 1984, no contracts between PG&E and third parties regarding construction of a third AC line have been executed. Such a document is likely to be executed in the near future.

[44] My stipulation would be, your Honor, to propose that the response to the data request be admitted instead of questioning this witness.

APPENDIX X, Orig. pgs. 43, 44

ALJ WU: Any objection?

MR. HINDUS: I don't think it is evidence. I think it is argument.

But since we prepared it, I can't object to it. But I still do not agree that the third line is within the scope of this limited hearing.

ALJ WU: I will accept that as a gracious stipulation.

* * *

[46] MR. LOZOWICKI: Q Okay. With respect to the minimum loads in PG&E's own service area, you also mentioned that to some extent QF suppliers are part of that consideration; is that right?

MR. KERLER: A That's right.

MR. LOZOWICKI: Q Okay. And isn't it true that the minimum loads of the QFs are addressed in standard offers that the Commission is authorized for QF purchases?

MR. KERLER: A There are under the different options different methods of handling backdown situations.

APPENDIX X, Orig. pgs. 44, 46

MR. LOZOWICKI: Q There are curtailment provisions, aren't there, in Standard Offer 4 for backing down QF takes under hydro conditions, for example?

MR. KERLER: A Yes, there are.

* * *

[49] MR. HINDUS: Q Parenthetically, Mr. Kerler, you have already answered this question, haven't you, in your prepared testimony?

MR. KERLER: A Yes, I have. If you refer to Question 13 and corresponding Answer No. 13, I discuss the fact that the degree that the 5 and the 10 percent reduction in utilizaiton of the intertie, to the degree that those don't occur, we would fill it with economy energy.

And again, any QF energy on the intertie would back off on economy energy that we were attempting to bring in.

* * *

[51] RECROSS-EXAMINATION

BY MR. LOZOWICKI: Q With regard to your last answer, Mr. Kerler, about your understanding of the Commission's policies, isn't it also true that the Commission has encouraged PG&E and in fact directed PG&E to accelerate the development of small power resources?

MR. KERLER: A That's correct, in California I believe that's the case.

MR. LOZOWICKI: Q Are you saying that the Commission has distinguished between California small power sources and other sources?

MR. KERLER: A I am not aware of anything outside the area. So my understanding would be to promote it in California.

MR. LOZOWICKI: Q In other words, the only projects you are familiar with are California projects?

MR. KERLER: A That's correct.

* * *

[52] MR. LOZOWICKI: Q Then finally you mentioned that even if the capacity on the intertie were not being completely used because of minimum load requirements, that to accept QF deliveries on the intertie would cause a further backdown on your takes on the intertie; is that correct?

MR. KERLER: A That's correct.

MR. LOZOWICKI: Q Now the minimum loads that you are referring to that cause the original backoff include the acceleration supply of QF power in California, doesn't it?

MR. KERLER: A Yes, it does.

* * *

[358] CROSS-EXAMINATION

[BY MR. LOZOWICKI OF PGandE WITNESS MALINOWSKI]

Q Mr. Malinowski, I'm Edward Lozowicki appearing for Cogeneration Services in this case.

I'd like to ask you some questions about your prepared testimony.

On page 7, paragraph 2 you describe in general the generation in PG&E's northern

area as consisting of hydro imports from the Northwest and the Sierras, Geysers, Rancho Seco, other entities, and QF projects.

[359] Is it fair to characterize that as sort of a basket of resources that PG&E has in the northern area?

[MR. MALINOWSKI:]

A Yes.

Q And on the preceding page, page 6, in the last paragraph you mention that,

> "The 500 kv lines carry some surplus generation and transfer it to the 230 kv system."

Is the surplus you're referring to there surplus from this basket of generation resources?

A Those that operate on the lower voltage system, yes.

[360] Q In other words, if there is surplus beyond the capacity of the lower voltage system, it might spill over to the 500 kv system?

A We can carry -- some of the power that flows on the intertie at times could be carried on the 230 system.

We also input power from our local system into the 230, and some of that at times can be carried on the 500.

You can't identify precisely how it is carried in a general way. The system varies depending on the loadings and generation and load patterns.

Q Okay. And if that pattern created a surplus of generation beyond the capacity of the 230 lines in a given area, would you then use the 500 kv lines in that area to carry the excess?

A Yes.

Q On page 7 in the third paragraph, you mention that PG&E expects the capacity of part of the bulk system to be exceeded during certain hours of the year.

And in subsequent parts of your prepared testimony, you talk about the summer peak and the spring peak periods.

Are the certain hours that you referred to here on page 7 the summer peak hours and the spring peak hours?

A No, not limited to those. We also have [361] problems in partial peak periods.

Q So it would include peak and partial peak both?

A And off-peak. The problems in the northern area result from a situation where you had power that needs to be exported out of the area.

And whenever you have a combination of loads and generation that produces exports above a certain level, you can have line loading problems.

And another variable in the equation is the capacity of the lines which vary depending on the ambient temperature conditions.

Q So when you were discussing off-peak hours and conditions which produce that lack of extra capacity, would that include the so-called minimum load conditions?

A Minimum load is off-peak. When we talk about minimum load conditions, we more often are thinking in terms of the minimum load problems at all our generation areas, not just the northern area.

Q So that the problem you are describing here could occur at times other than during minimum load conditions?

A As far as the transmission line loading problems, yes.

Q Thank you.

Now, on page 8 you have a table which describes a comparison between load and resources [362] on the northern system.

And the fifth column in the table describes what you call surplus resources, which in the northern system would be 1962 megawatts.

Is that the proper reading of that table?

A Yes.

Q And those surplus resources, I take it, at the present would be -- strike that, please.

You mention later on that page that the surplus is usually transmitted to meet Bay Area load requirements.

Is that correct?

A Yes.

Q Would that surplus be transferred over the the bulk system to the Bay Area?

A Yes.

Q On page 9 you describe a potential overload condition on both the 230 kv line and the 500 kv capacitors as a result of adding QF generation.

Could you give me a layman's description of capacitors.

A Well, physically, a capacitor is a -- are two conductors separated by an insulating medium or a dielectric. Coming up with a mechanical analogy --

Q Are they wires?

A No. They are not wires. You have seen capacitors -- probably seen capacitors on pole lines, on tops of pole lines. They are contained in [363] cans that are about maybe 18 inches wide, three or four inches thick, and maybe 2 feet tall.

Q But physically they are found on the pole supporting the lines?

A Those are distribution capacitors. The 500 capacitors are on racks located under the lines at substations or along the line.

In our case we always locate them at the substations.

Q And in describing the effect of additional QF power here on page 9, you are saying that the addition of any significant amount of QF power would -- strike that -- would result in overload conditions on the 500 kv capacitors between Round Mountain and Table Mountain?

A Yes.

Q On page 10 you have another table which describes the potential overloading as a result of adding various amounts of QF power.

And in that table --

MR. HINDUS: Objection. I don't think that is what this table stands for.

Do you want to ask him whether it does?

MR. LOZOWICKI: Q Did you understand the question, Mr. Malinowski?

A Please repeat it.

Q Did you want it read back?

A Yes.

[364] MR. LOZOWICKI: Could we have the question read back.

ALJ WU: Miss Reporter, can you find it?

(Record read)

MR. HINDUS: I guess my objection is that I think there is a characterization there, and I guess I would ask the opportunity to voir dire the witness, having learned that term last week, and ask him if that is, in fact, what that table stands for.

Then we can continue the line of questions.

ALJ WU: I don't quite follow what your objection is, Mr. Hindus.

Would you repeat your question first, Mr. Lozowicki. You stopped someplace.

MR. LOZOWICKI: Perhaps I will try to make it more specific, your Honor.

Q Mr. Malinowski, with regard to the table on page 10 of your prepared testimony, as I understand it, that table describes the result in terms of overloading on the PG&E bulk system from the addition of different amounts of QF power at different times of the year.

Is that correct?

A That table shows for two conditions, the summer peak and a spring partial peak loadings that would result from additions of the designated amounts of QF power, in addition to the resources that are already available in that area.

[365] Q Okay. And I note that with respect to the 500 kv series capacitors that the addition of -- strike that.

With respect to your estimate of the overloading caused during spring partial peak

conditions, you have used the figure 300 megawatts of new power; is that correct?

A Yes.

Q And would the percentage of overloading be higher if we were to use 1150 megawatts during a spring partial peak rather than 300?

A Yes.

Q And is one of the reasons for the overloading during that spring partial peak period, even with 300 megawatts of new power, the effect of the spring runoff and generation in the northern area?

A I think the situation is that you do have heavy hydro availability and the loads are down, so that increases the amount of power that has to be exported from the area.

Q Is it possible that if you were to add 1150 megawatts during that spring partial peak period, that the overloading might cause some effect on the PG&E's takes of Northwest imports?

A Yes, it is possible.

Q And on page 11, summing up your description of that analysis, you mention that -- you conclude, that is, that the bulk transmission system would [366] have no available capacity for firm transmission of additional QF power.

Regarding that statement, would that apply irrespective of whether we were adding 300 megawatts or 1150 megawatts of QF power to the system?

A That is correct.

Q On page 16 in the second full paragraph, you discuss the accommodation of additional QF power beyond the 1150 megawatts currently authorized.

And in that regard, you say that PG&E is willing to negotiate non-firm agreements until such time as perhaps further transmission capacity would be built.

Would one possibility in those northern firm agreements for accommodating another project that was not included in the current eligibility list expand the curtailment rights?

A I am not sure I understand the question.

Q You refer here to a non-firm agreement in describing the kinds of agreements that PG&E would consider negotiating for a project that did not have transmission capacity within the current 1150 megawatts.

And I am trying to get an idea what kind of non-firm agreement that might be. And specifically, would that be an agreement that contemplated more curtailment than PG&E would otherwise be allowed to give to a QF?

A We don't have the right to curtail QF's [367] that are included in the 1150 in the stipulation, but we would, if we signed such a contract in the northern area, such QF's that are not included in the stipulation would be subject to curtailment until transmission reinforcements were built to eliminate the overloads that they would cause.

Q On page 17 in your prepared testimony you had discussed -- strike that --

you mention that to minimize curtailment, PG&E would implement dynamic line loading on both the bulk and area lines.

Could you give the layman's definition of dynamic line loading?

A Dynamic line loading is a procedure where our dispatchers or system operators would monitor all ambients and establish load limits based on actual ambients, rather than the assumptions we use now for line ratings where we look at the maximum expected temperature and a 2 foot per second wind that the line would see.

It basically gives us the ability to load the line up to its real thermal limit, rather than a limit established based on seasonal ambient maximum.

Q Is that something -- when you say ambient, you are referring to the ambient temperature?

A Yes.

Q Lower temperature than would permit, in effect, higher rating --

A Yes.

[368] Q -- on the line?

Would that be possible on both -- would that be possible on the bulk system as well as the area system?

A Yes. You have to be careful that the other equipment on the line is taken into account.

On the 500, the line capacitors have an absolute limit that is not affected by ambients.

But as far as the limitation due to the conductors, you would be able to load to that limit.

Q So you could make changes regarding the conductors?

A Yes.

Q In the attachments to your prepared testimony, you include a series of what I believe are called power flow diagrams, Attachments 2 through 6.

Is that right?

A Yes.

Q And as I understand these, Attachment 2 and Attachment 3 study the potential effect of adding additional QF power during the 1984 summer peak.

Is that right?

A I believe this study is showing what the loadings would be without additional QF power.

Q In other words, this is the current situation?

A Yes. This is showing with current QF's and current generation capability that we are loaded to -- the system is loaded to its limit.

[369] Q Does it also apply to the figure shown on Attachment 4?

A Okay. 3 and 4 show what happens with additional QF power.

Q Okay.

A 2 starts out with 196 megawatts of QF power in the northern area, which is what was existing at that time.

Attachment 3 adds 300 megawatts of QF to the already existing.

And Attachment 4 shows what happens if you add 1150 megawatts to the existing QF capacity.

Q I see. So on Attachment 4, for example, if the 1150 megawatts already authorized were added to the system, the handwritten note in the middle indicates that the capacitors between Round Mountain and Table Mountain would be running at 103 percent of rated capacity?

A Yes.

Q And Attachments 5 and 6, if I understand them properly, refer to the spring partial peak period?

A Yes.

Q And Attachment 5 references 196 megawatts; is that the current situation?

A Yes.

Q And this chart, Attachment 5, indicates that the Round Mountain-Table Mountain capacitors are then [370] under the current

situation running at 101 percent of rated capacity?

A Yes, with 3200 megawatts of input from the Northwest.

[371] Q And then Attachment 6 refers to the spring partial peak period with a total of 496 megawatts?

A Yes.

Q I assume 300 would be the 300 additional beyond the current QF resources in that area?

A Yes.

Q And those 300, then, would produce the 106 percent of rated capacity on the Round Mountain-Table Mountain capacitors?

A That's right.

Q And that also assumes Northwest imports of 3200 megawatts?

A Yes.

Q Would these then support your conclusion that it's possible that by adding additional QF generation before the transmission upgrades are completed might result in cutbacks on Northwest imports?

A What we've agreed to is that we would look at a combination of measures cutting back our own generation within the northern area and/or cutting back on Northwest imports.

Q Well, on Attachment 9 you outline the potential transmission upgrades planned to accommodate 1150 megawatts of QF in the bulk system, is that correct?

A Yes, that's correct.

Q And are these in fact the upgrades that [372] PG&E plans to make under the so-called interim stipulation?

A Yes.

Q And the last item on your list there talks about adding a second 500/230 kv transformer bank at Tesla.

Would that solve this problem with the capacitors between Round Mountain and Table Mountain that you described previously?

A No.

Q That problem still exists?

A Yes.

MR. LOZOWICKI: I have nothing further at this time, your Honor.

* * *

[REDIRECT EXAMINATION BY MR. LOZOWICKI OF MR. GOLD]

[834] MR. LOZOWICKI: Q Had you previously discussed before this proceeding started the concept of firming and shaping with PG&E?

MR. GOLD: A I don't know if it was before this proceeding started. But in our early meetings one of the things we proposed to do was to try and focus our delivery.

In order to make the transaction more attractive, we hoped, to PG&E from the first, we proposed that deliveries would be under peak and partial peak periods only.

Q Why would that be more valuable to PG&E?

A Well, it seemed to us that I had had discussions with PG&E personnel in the past about concerns they had that in particular, during off-peak periods [835] they feared after Diablo Canyon became operational, they feared periods of minimum system operation,

significant periods during the off-peak period certain months of the year.

In addition, we knew that energy has particular value to PG&E during peak and partial peak periods, more so than during off-peak periods. And we thought if we could provide firm power, we knew there would be resistance to delivering QF power over the intertie. There's no question. It's been tried for years. Nobody has been able to do it.

We thought that we were going to deliver firm power, we are going to deliver schedulable power, dispatchable power and we will make an ironclad assurance that we will be able to deliver it to you during the period when it is most valuable to you, partial and peak periods, and even, if possible, partial and peak periods during the summer season, that that would make them more eager to purchase the power because it would be power to them of higher quality.

Q Because it was during peak load periods?

A Well, because it was during peak load periods, because there might be other times during the year where we might be able to negotiate a situation where PG&E would say please don't deliver your power now, there's other energy we would like to buy now.

Like there is a very carefully defined period in the Northwest called the fish flush period [836] when Bonneville has to run a lot of water through the dam in order to permit the salmon to go to the ocean.

It runs for six or seven weeks, eight weeks. That's a period when you can generate a lot of economy energy.

And we thought that maybe we would make an arrangement with PG&E that you have got your provisions in your Standard Offer 4 contracts. We will make arrangements to shut down our projects or run the projects and store the energy here and deliver it at other times of the year when it is more valuable to you.

APPENDIX X, Orig. pgs. 835, 836

MR. HINDUS: Your Honor, I'm going to object to this entire last answer for the reason that Mr. Lozowicki has stated so many times before.

This in fact was the subject of confidential settlement negotiations where there's written understanding that this will be confidential.

They didn't apply to standards offers. These didn't apply to the situation where the Commission would order us to sign a standard offer.

And I think that the fact that in the context of negotiations shaping and firming might have come up is totally irrelevant to this proceeding, and particularly in view of Mr. Lozowicki's insistence that such discussions not even be referenced on the record.

MR. AJELLO: Your Honor, it does seem to be well [837] beyond the scope of this proceeding.

MR. HINDUS: We never, never contemplated -- we never saw these marketing agreements

before. We never contemplated -- in fact, I have kept these marketing agreements pursuant to Mr. Lozowicki's insistence from our negotiators.

There was never in any of these discussions a notion that there was a revenue enhancement part of that or anything like that.

And again, as I said, it was pursuant not to a standard offer. It was not pursuant to the demand that Mr. Lozowicki is making to this Commission here. I think it should be struck.

MR. LOZOWICKI: Your Honor, I am not inquiring about settlement discussions that Mr. Gold had with counsel present. I am inquiring about the other discussions that he had with PG&E prior to that time that led to this for PG&E.

I would not inquire about any settlement discussions. My understanding of his testimony is to explore the context in which firming and shaping came up in his discussions with PG&E.

As far as the scope of it goes, there's been extensive cross-examination about the concept of firming and shaping as used in the marketing agreement and as it relates to the nature of this transaction which is before the Commission.

I think I am allowed to explore -- it is [838] certainly not beyond the scope to explore what firm and shaping involves and whether or not it was previously discussed with PG&E and in what context.

MR. HINDUS: I would like to know --

ALJ WU: Overruled.

Had you finished your answer?

MR. LOZOWICKI: Do we have a question standing, Miss Reporter?

THE REPORTER: No.

MR. LOZOWICKI: Q Your prior discussions in essence were that you might exchange curtailment for firming and shaping?

A That was the reason that we included the firming and shaping provisions in our contract.

We were told by PG&E on at least three separate occasions in one meeting with Elmer Hall, in one meeting with Raphael Malano, and in one meeting I believe with Tom Jefferson that we would need to have contracts to provide for scheduling, firming of power with regard to deliveries over the intertie.

There was a time when PG&E was talking with us about the nature of the contracts we would need in addition to the standard offer to effect the transaction.

That's not to say that they agreed to do it, but they were talking about what would be needed.

Q This was prior to your subsequent settlement [839] discussions?

A Absolutely. As a matter of fact we have letters of exchange in which we talk about the kind of documents we are going to have to draft.

But specifically, at least in one discussion with Elmer Hall, we talked about that and we said we can do more than that. We

can arrange to have this power delivered, banked and stored in the Northwest and redelivered during peak and partial peak periods.

MR. HINDUS: Your Honor, now I would have to object. I was at that meeting. That was the first confidential settlement negotiation.

THE WITNESS: It was well before that. And you weren't there.

MR. LOZOWICKI: Your Honor, the witness has had meetings with PG&E that were not settlement meetings attended by counsel. I am not inquiring into those settlement meetings.

THE WITNESS: To my knowledge, your Honor, the meeting I am now talking about I think took place in August. It could have been the meeting at which we delivered the August 8th letter. That is what I think it was.

That is just not the settlement meetings you're talking about.

ALJ WU: Let's proceed.

MR. LOZOWICKI: Thank you, your Honor.

Q Why is firming of power necessary for intertie [840] deliveries?

A As I stated earlier, you have to have a block of power coming across the intertie on an hourly basis.

What PG&E said and what we agreed with was that they would want evidence that such firming and shaping short term at the very minimum would be arranged because otherwise you can't have if, as and when deliveries on the intertie within the context of a dispatcher and a schedule.

The intertie is loaded in even megawatt or even 10 megawatt blocks or maybe even hundred megawatt blocks from hour to hour.

Q So this blocking of power is done currently?

A With all transactions.

Q Between the other utilities that deliver to the intertie?

A Always.

Q So those utilities are practicing to some extent firming and shaping now?

A Yes. And in addition, there is firming and shaping between seasons or between diurnally, daily and night, firming and shaping and storing of power.

Q How does that occur at present?

A Somebody ships power down during peak periods, and that utility ships power back up during the off-peak periods.

And according to the bookkeeping of the [841] transaction, the only thing that's changed hands is peak. It's called naked peak, for example, when in fact there really is no such thing as naked peak.

You can't deliver capacity without energy, but capacity comes down and capacity and energy comes down and energy only is returned or energy is taken out of the Northwest and redelivered. And there's a whole series of bookkeeping transactions.

Q You say this practice goes on at present on the intertie. Is that the essence of the so-called exchange agreements?

A Some of the exchange agreements. That goes to issues like the seasonal diversity and daily and peak delivery agreements.

* * *

CONSTITUTION

* * *

The Congress shall have Power To . . .

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; . . . CONST. ART. 1, SECTION 8

* * *

Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility. CONST. ART. 1, SECTION 10.

* * *

§ 824a-3. Cogeneration and small power production

(a) Cogeneration and small power production rules

Not later than 1 year after November 9, 1978, the Commission shall prescribe, and from time to time thereafter revise, such rules as it determines necessary to encourage cogeneration and small power production, and to encourage geothermal small power production facilities of not more than 80 megawatts capacity, which rules require electric utilities to offer to--

(1) sell electric energy to qualifying cogeneration facilities and qualifying small power production facilities[1] and

(2) purchase electric energy from such facilities.

Such rules shall be prescribed, after consultation with representatives of Federal and State regulatory agencies having ratemaking

authority for electric utilities, and after public notice and a reasonable opportunity for interested persons (including State and Federal agencies) to submit oral as well as written data, views, and arguments. Such rules shall include provisions respecting minimum reliability of qualifying cogeneration facilities and qualifying small power production facilities (including reliability of such facilities during emergencies) and rules respecting reliability of electric energy service to be available to such facilities from electric utilities during emergencies. Such rules may not authorize a qualifying cogeneration facility or qualifying small power production facility to make any sale for purposes other than resale.

(b) Rates for purchases by electric utilities

The rules prescribed under subsection (a) of this section shall insure that, in requiring any electric utility to offer to purchase electric energy from any qualifying

cogeneration facility or qualifying small power production facility, the rates for such purchase--

(1) shall be just and reasonable to the electric consumers of the electric utility and in the public interest, and

(2) shall not discriminate against qualifying cogenerators or qualifying small power producers.

No such rule prescribed under subsection (a) of this section shall provide for a rate which exceeds the incremental cost to the electric utility of alternative electric energy.

* * *

(d) "Incremental cost of alternative electric energy" defined

For purposes of this section, the term "incremental cost of alternative electric energy" means, with respect to electric energy purchased from a qualifying cogenerator or qualifying small power producer, the cost to the electric utility of the electric energy which, but for the purchase from such

cogenerator or small power producer, such utility would generate or purchase from another source.

* * *

(f) Implementation of rules for qualifying cogeneration and qualifying small power production facilities

(1) Beginning on or before the date one year after any rule is prescribed by the Commission under subsection (a) of this section or revised under such subsection, each State regulatory authority shall, after notice and opportunity for public hearing, implement such rule (or revised rule) for each electric utility for which it has ratemaking authority.

(2) Beginning on or before the date one year after any rule is prescribed by the Commission under subsection (a) of this section or revised under such subsection, each nonregulated electric utility shall, after notice and opportunity for public hearing, implement such rule (or revised rule).

* * *

EXCERPTS from 18 C.F.R. §292

* * *

. . .

(6) "Avoided costs" means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source. 18 C.F.R. §292.10(b)(6).

* * *

§292.303 Electric utility obligations under this subpart.

(a) Obligation to purchase from qualifying facilities. Each electric utility shall purchase, in accordance with §292.304, any energy and capacity which is made available from a qualifying facility:

(1) Directly to the elctric utility; or

(2) Indirectly to the electric utility in accordance with paragraph (d) of this section. 18 C.F.R. § 292.303(a).

* * *

APPENDIX Y

(d) Transmission to other electric utilities. If a qualifying facility agrees, an electric utility which would otherwise be obligated to purchase energy or capacity from such qualifying facility may transmit the energy or capacity to any other electric utility. Any electric utility to which such energy or capacity is transmitted shall purchase such energy or capacity under this subpart as if the qualifying facility were supplying energy or capacity directly to such electric utility. The rate for purchase by the electric utility to which such energy is transmitted shall be adjusted up or down to reflect line losses pursuant to §292.304(e)(4) and shall not include any charges for transmission. 18 C.F.R. §292.303(d).

* * *

§292.304 Rates for purchases

(a) Rates for purchases. (1) Rates for purchases shall:

(i) Be just and reasonable to the electric consumer of the electric utility and in the public interest; and

(ii) Not discriminate against qualifying cogeneration and small power production facilities.

(2) Nothing in this subpart requires any electric utility to pay more than the avoided costs for purchases. 18 C.F.R. §292.304(a).

* * *

(d) Purchases "as available" or pursuant to a legally enforceable obligation. Each qualifying facility shall have the option either:

(1) To provide energy as the qualifying facility determines such energy to be available for such purchases, in which case the rates for such purchases shall be based on the purchasing utility's avoided costs calculated at the time of delivery; or

(2) To provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified

term, in which case the rates for such purchases shall, at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on either:

(i) The avoided costs calculated at the time of delivery; or

(ii) The avoided costs calculated at the time the obligation is incurred. 18 C.F.R. §292.304(d).

* * *

(f) Periods during which purchases not required. (1) Any electric utility which gives notice pursuant to paragraph (f)(2) of this section will not be required to purchase electric energy or capacity during any period during which, due to operational circumstances, purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make such purchases, but instead generated an equivalent amount of energy itself. 18 C.F.R. §292.304(f)(1).

* * *

APPENDIX Y